MINUTES OF MEETING - JOINT HEARING - ASSEMBLY & SENATE COMMITTEES ON JUDICIARY
54th Session, Feb. 8, 1967

Hearing was called to order at 2:05 P.M.

Assembly Committee members present: Wooster, White, Lowman, Kean, Dungan, Swackhamer, Hilbrecht, Torvinen

Absent: Schouweiler

In his welcome and opening remarks Mr. Wooster made special mention of the presence at the hearing of Judges Zenoff, Collins and Barrett.

AB 71: Revises criminal penalties and provides for determinate sentences.

SIDNEY WHITMORE, city attorney of Las Vegas, was the first speaker to be called. He said, however, that his comments would deal mostly with AB 81 and asked if he might delay his remarks.

WILLIAM BEKO, Nevada District Attorneys Association was next called. He said that he had planned to speak on both bills together. Since Chairman Wooster had announced that each would be dealt with separately he chose to speak later, other than to say that this act is one that will require a great deal of study by everyone. He then introduced William J. Raggio, District Attorney from Washoe County.

WILLIAM J. RAGGIO: I would like to reserve the right to present written suggestions for possible amendments to the bill as presently written. We, the Nevada District Attorneys, are going to meet again today after the hearing to solidify our feelings and put our comments in a written report. We hope this will not be the final hearing on these two bills. My group would like to submit written proposals. We feel that society as a whole may be prejudiced by the bill in its present form.

I am authorized to tell you that in addition to the District Attorneys' Association I represent the views of the Nevada Peace Officers Association, and also the Sheriff's Association. All three groups have had meetings and we are all agreed that we are engaged in a rather large task. We are changing laws we have lived with for one hundred years.

We feel the efforts of the committee that worked on this legislation should be commended. Both bills point in the right general direction.

We have searched these measures and have discovered some gaps or omissions, as well as unnecessary or undesirable changes or modifications. Certainly further study is necessary. We are not here to stop progress. If further study can be accomplisned within a month while you are meeting, then fine. If not, it should be left until next session, we are sure.

AB 71 has to do largely with sentencing procedures. It has been brought about by legislation enacted last session. It provides for determinate sentencing and parole eligibility. It is a hodge-podge of sentencing procedures which have been used in other jurisdictions. This will not bring us in line with California. Their procedure has greater merit, we feel, than that suggested in AB 71.

Under the California procedure, when someone is convicted and probation is denied, he is sent to the institution. There is a minimum time he must serve before his case is considered for parole. It follows the indeterminate sentencing, not less than so many years and not more than so many years. After the minimum term, like 3 years for robbery for instance, the parole authority meets and it sets at that time a determinate sentence. To repeat, after the person has served the minimum 3 years, he appears before adult authority who consider all factors and sets as a result a determinate sentence, or it may decide that it is not time to set a determinate sentence and will hold it over. At some point it is set. The adult authority may set this sentence at 6 years, with 2 years which may be served by parole. They have done away with the idea of good time credits, work time, etc. It seems ridiculous to some of us to reward someone in prison for good time.

I commend the committee for grouping crimes in categories.

Most crimes carry 1 to 6 years sentence. It makes little difference whether the District Judge says 1 or 6. This makes no difference in his eligibility for parole. Work time and good time, eligibility time, will be about the same, utilizing the one-fourth criteria. Further study and a better plan should be given to the method of sentencing and determining the elgibility of parole consideration.

We should delete crime which are now non-probationary. We are in large portion opposed to reclassifying crimes which are now misdemeanors to gross misdemeanors. Gross misdemeanors will require additional cost and are not of sufficient concern or attention to warrant this. The smaller counties especially will be very concerned about the gross misdemeanors.

We are consolidating specific suggestions and hope to present them tomorrow. At a more appropriate time I will have more remarks on AB 81, the procedural law.

FRANK DAKIN was called to explain changes made. He said the following offenses in this bill are classified as misdemeanors: Petty Larceny, Assault & Battery, Forcible Entering and Detainer, Rout & Riot, Publication and Distribution of Obscene Matter, Aiming a Deadly Weapon. The ceiling is left at $100.

SENATOR DODGE: Does the judge there have any flexibility about determining the minimum or does he set the minimum as prescribed by law?

RAGGIO: In most cases there is no discretion allowed to the court other than the setting of indeterminate sentencing. Most of us feel that the District Court should have some discretion. It is rather ridiculous that they do not. The District Judge should have some latitude. A determinate sentence should not be set until a minimum time has been served and the person evaluated.

ROY TORVINEN: Are any gross misdemeanors left which were former misdemeanors?

FRANK DAKIN: Yes, there are, but they are not the more common offenses. I will supply you with a list.

FLORA DUNGAN: You object to which sections?

RAGGIO: Robbery--certain narcotics. We feel that Robbery is not a probationable offense. It should be in the same category with Rape and Murder.

FLORA DUNGAN: You feel that these are not rehabilitatable?

RAGGIO: I think "rehabilitate" is a most over-worked term. People think that most prisoners are first offenders. This is not so. Only a minority can be rehabilitated. This has nothing to do with parole.

AB 81: New criminal procedure law

SIDNEY WHITMORE: I am appearing in behalf of the city of Las Vegas. Our principal interest in 81 is how it affects our municipal court in its operation under substantive law.

We need to bring to your attention some matters having to do with Justice Court. We should amend to make it clear that we do not have appeals from guilty pleas in Municipal Court. Specifically, probation should apply in these cases.

It might be well to provide some type of transcripts in Municipal Courts rather than having a new trial.

Recently we have had a Supreme Court ruling from this state that provides we are to have jury trials on appeal from Municipal Courts. No city now has jury trials for these situations. I don't think rights are being jeopardized by not having jury trials in misdemeanor matters. I would like to see that corrected. I would like to see all matters right for the Municipal Court as well as for the Justice Court.

DAKIN: We have provided specifically that no appeal either from Justice Court or Municipal Court be tried by jury.

RAGGIO: I am speaking on this for the law enforcement people too. We do have a long list of suggested changes for AB 81, and we would hope to furnish you with this list in writing for your consideration. 81 is a much greater change from our present situation than is AB 71. It opens up an entirely new procedure to be followed in criminal cases. Our concern as prosecutors is that in our anxiety to make changes we may come up with a great many things that we are unable to live with. We want a great many changes, but abrupt, immediate change without considering all the ramifications of these changes could be disastrous.

We want fair and effective administration of criminal justice. In the procedure which has grown up through the common law we have something which has been devised because of experience which we learned in many areas by hard and bitter experience. We are trying to develop something which is basically the fairest way to bring forth the truth at a criminal proceeding and give those persons charged with crime every right which is basic to our way of life.

We say and suggest to you here that whatever we decide on should not be merely an out that is the way the prosecutor wants nor the one best liked by the defendant of a criminal case. We have tried to approach this legislation with that in mind. If we were to present everything we don't like, we could nit-pick on every section but that is not our desire. We are just as interested as any of you to accomplish something worthwhile.

Rather than take time to go over each section I would like to pick just some of them and later give our complete objections. I will refer to section and page.

Section 20, page 2: I see no defense for defining where a trial commences, where a judge is used and where a jury is not used. A trial should commence when the first witness is sworn.

Section 13, page 2: Peace officers should include district attorneys and investigators for district attorneys.

Section 25: See no reason for changing.

Section 46 page 6: This is obviously ridiculous. A gun is a very important piece of evidence. The weapon should be taken and examined by laboratories so that evidence will not be disrupted. This will only deter investigation and proper use of evidence.

Section 47 page 6: I feel this should also include teletype wire.

Section 69 page 11: This should include, also, gross misdemeanors.

Section 72 page 11: Provides for remand of preliminary examination by justice of the peace. By experience, we have found that sometimes it should be other than a justice of the peace.

Section 80 page 12: Recommend a specific provision that the deputy foreman, as well as the secretary, of a grand jury be allowed to swear witnesses and administer oaths and issue subpenas.

Sections 86, 87, 88 page 13: I recommend that consideration be given to the present rules of criminal procedure 6, 7 and 8, which provide far lesser degree of evidence to be present in support of in indictment which is not a formal charge. There should not be the necessity of a formal trial to bring a formal charge.

Most of AB 81 is taken from or conforms to the Federal rules. There are some things included which have no place under our procedure. It is just a matter of transplacing the entire language from the Federal to 81.

Section 94, page 14, and those other sections which relate to sustenance of 94: This has to do with preparing a transcript of the grand jury proceedings and then furnishing a copy to the defendant. This is a recent development by the Supreme Court in our state. Previously the defendant was not entitled to the transcipt of testimony presented at the grand jury. Many of us feel that the secrecy of the grand jury should be kept inviolate. It has more functions here than in most states. Just the mention that the grand jury is going to look into something has had a very salutory effect upon officials throughout the State of Nevada. This has been accomplished because persons felt they could appear before the grand jury and relate what they knew without fear of reprisal or ridicule. We suggest that the type of evidence necessary for an indictment be such as is required for a Federal indictment.

An indictment, once filed, is presumed to be valid without transcripts and delivery of transcripts to a defendant. Having these transcripts made and delivering them would amount to tremendous cost in all the 17 counties. A transcript is not cheap.

As an alternative, I would suggest something to preserve the traditional and valued secrecy of the grand jury proceedings.

An objection will be raised: Why shouldn't the defendant know the details? There is a great deal of difference between a civil proceeding and a criminal proceeding. If we are after the truth in the matter in court then we must change something about this section for we are whittling away at the proper method for arriving at the truth in court.

Section 99: This limits the length of time a grand jury may serve to 3 years. Now they may not be discharged before the expiration of one year. This new rule would make it mandatory that the jury be discharged by the end of 3 years. In our experience we have found it necessary to retain a grand jury for longer than 3 years. The grand jury that investigated the city administration in Reno was longer than 3 years and to have dismissed them sooner would have been disastrous. An absolute breaking off point for a grand jury would be most undesirable.

Section 107 page 16: We feel this should have no place in our criminal procedure. Historically and logically the function of the District Attorney has been to evaluate circumstances and determine in his discretion whether or not a crime has been committe To have the judge order the District Attorney to prosecute a case is unwise law.

This is such a long subject that mistakes have inevitably occurred and omissions been made. For instance, I would like to feel that there could be a plea of guilty but it is omitted from the list of pleas.

I feel that the new plea of nolo contendere is a good innovation. It should be allowed only by the consent of the court and the D.A. We should never have a guilty plea without the consent of the D.A. It will always be nolo contendere.

Section 139 page 22: I would like to study further the possibility that not only the defendant would have the right to take depositions but also the prosecutor.

Section 145, 146, 147 page 23: This involves a rather controversial area of discovery. The courts have wisely used their discretion in this area and we feel that this is probably a good approach, should exercise discretion upon a showing of cause. I also feel that if there is going to be discovery as set forth in AB 81 the defendant should also be compelled to make prior disclosure of alibi and witnesses. If not, the state has no chance to check on his alibi. If we are really trying to get at the truth, this should be done.

Section 152 and attendant sections: The law which is presently in force has been changed and only the clerk of the court has power to subpena witnesses. The D.A. must insist on having this power. It is an absolute necessity. We see no reason whatsoever for making any change here.

Section 153: Each party should have the right to call a witness without the necessity of a motion upon proper application.

Sections 2, 11, 213: Now a District Judge may direct the jury to return a verdict of not guilty. This is called an advisory verdict. The jury may disregard this and return a verdict of guilty. In Washoe County we had a jury that disregarded an advisory verdict and returned a verdict of guilty. A member of the bar was tried

for subornation of perjury. I feel it would be tragic to take from the jury the right to make the decision for itself.

Section 213 goes beyond that and says that even after 7 days, when a jury has returned a verdict of guilty, the defendant can make an appeal for an acquital and have it granted by the court. We feel the present jury rule should be retained.

Section 243: This concerns pre-sentence investigation, also provides that the court be advised of normal punishment for like crimes in the U.S. We question that this is a legitimate requirement.

Section 244: This is a new wrinkle where the report of the pre-sentence investigation is given only to the trial court. Now the D.A. also receives a copy. This is important because often the prosecutor's office has supplemental information. I see no reason to exclude this information from the D.A. This would have some influence on approach to the matter at probation time.

Section 247: Robbery has been excluded and we feel it should remain there, along with murder, kidnap and forcible rape.

Section 291: This provides for automatic appeal in death cases. We have no objection, however, we feel that something should be spelled out as to just how this appeal will be perfected. The section provides no details as to how this will be done.

There are some changes that we would recommend in the area of search warrants as proposed here.

Section 372: This is also a new wrinkle which is apparently intended to apply to a misdemeanor but it isn't clear that it does. It says persons guilty of criminal offense. This should require the consent of the D.A.

Section 390: This would not cover a situation where property is stolen in California and hidden here. This should read "criminal offense" and search warrante should be available.

I have not hit upon all the points that we feel merit some consideration. These are the highlights. We will incorporate them more fully in writing later.

NORMAN HILBRECHT: It is my understanding that the concern here is the extent to which proceedings before a grand jury abrogate the necessity for a preliminary hearing for people having established reasonable cause. I take it that it is not your position that some relief in the nature of reasonable cause ought not to be established or set up at least as an alternative?

RAGGIO: We suggest the Federal standards.

HILLBRECHT: On probation reports, could we clarify that by making reports to both counsel and D.A.?

RAGGIO: We would have no disagreement with you on that. My dissent has been that they have felt some limitation in making their representation if the representation was going to be made available to the defendant. We are dealing here with a situation where a plea of guilty has been entered.

Another section changes the present existing law which provides that information received by a parole or probation officer in the course of his duties may be made available to the court, the Parole Board and other official agencies. I think this would be a serious mistake. We have found it inevitable to request information which is in the files of the Parole and Probation Department. Other than that it should be confidential information and this right should be continued.

ROY TORVINEN: Question on page 13 section 90.

RAGGIO: This is the present law. It doesn't represent any change. I see what you mean, however. It should say "not charged" instead of "not indicted". You are right. It should be changed.

TORVINEN: Referring to the section that District Judges require the D.A. to prosecute: Could the Attorney General prosecute?

RAGGIO: It seems to me that the Attorney General does have the right to come into any criminal prosecution, I think without request. He also may come in at request.

TORVINEN: Any purpose in omitting jeopardy?

RAGGIO: I don't know why that was omitted. Maybe it can be reached under one of the other sections.

One other area I would like to speak on, the section that precludes the D.A. or any other person from relaying publicly anything that a grand jury is undertaking. I think this would be a grave error. We are not talking about matters where criminal cases are being considered. We are talking about areas which involve permissive powers of grand juries, such as public officers being found unworthy and so forth. Some involve areas of police administration, affairs of welfare department, places where general agencies have found necessity for making an investigation and have filed a report. This has been a valuable psychological factor upon persons involved. Just an indication that a grand jury may look into something is information that should be made public. As I understand it, a D.A. or anyone can mention that a grand jury is going to look into something. There is a situation in Clark County right now that needs looking into. The public is entitled to know that the grand jury is going to look into it. The nature of the inquiry should be public information.

DUNGAN: Is there any authorization for the grand jury other than criminal?

DAKIN: Yes

HOWARD MCKISSICK: I suggest that we legislators stay out of this and hear from more of these informed people.

HILBRECHT: Were all attorneys made aware of this hearing?

WOOSTER: Every attorney in the State of Nevada was notified of this hearing.

RAGGIO: Under this proposal some of these things would no longer be crimes of common law. You have provided punishment for something you no longer say is an offense.

JUDGE JON COLLINS: I believe that there should be some background given on the drafting of this bill. By resolution of the legislature, an interim commission was established under the chairmanship of Mr. Mel Close. Other people were included. I was a member of the trial bench and I was designated a member of this commission. The commission met for the better part of a year. During that time, meetings were held in Reno and Las Vegas and all persons who had anything to say were invited to attend. Some did attend, in considerable numbers, members of the bar and other member of the bench. There was a broad consideration of the matters that were finally put into this draft. There are, of course, errors that should be corrected, but I would suggest that the bill as proposed is an over-all and integrated whole. Be careful in modifying any part of it or changing any part without considering the other parts. Great thought was given to this.

Probably the bill has general merit down the middle of the line. There are some innovations, but the law doesn't stand still either. The pre-se tence investigation is intended basically for the trial judge who has to make the decision as to probation.

Section 244, paragraph 2--this seems to me to have unlimited discretion on the part of the trial court. It isn't anyone's purpose to keep it away from the District Attorney or from the defense if they need it. Neither should have, as a matter of right, the possession of it. I think there will be much flexibility, and in most cases both sides will receive copies.

I would think it is important, and especially to you, to have some knowledge as to how this draft was arrived at. Please make your consideration with that in mind.

GEORGE FRANKLIN: District Attorney of Clark County. I am not going to get into specifics. I would like to urge that you take a long look at this bill. Our old Act has been in effect for one hundred years. It does not need to be changed in two years. There should be more hearings and more opportunities to be heard. I first saw this bill about the middle of last December. If it is passed just to make a change, it will end up with every ambiguous phrase being tried in the court. These ambiguities should be worked out before this is passed. I suggested about twenty changes and Mr. Dakin agreed with practically all of these.

DAKIN: That is correct, and there are doubtless many more changes which should be made. Fifty-five pairs of eyes should be sharper than the lesser number that devised this. I hope the "guilty" plea was the fault of the printer. Don't listen to the views of the prosecutors and then the defense counsel and try to come up with a compromise. You are concerned with the basic needs and the protection of society. It is not Raggio versus some criminal. It is the State of Nevada. The D.A.'s are there representing society. The D.A. is there in your behalf and in behalf of society.

FRANKLIN:
I have heard that sentences should be comparative to other states. I do not believe this. Nevada has problems that are unkown to other states. We have a 24-hour economy. Our crime rate is always going to be higher because we do not fold cities up at 11:00 P.M. I say, and many others feel, that if burglary merits a certain sentence in another state, it should be a little tougher in Nevada. We should get this kind of reputation for Nevada.

Every law enforcement officer should be allowed to make an arrest if he sees a need for it. If they come on a wrecked car with a drunken driver they cannot make an arrest because the event was not witnessed by him and he has no warrant for the arrest.

This situation should be corrected in this bill.

CLINTON WOOSTER: Chairman of Committee on Judiciary for the Assembly . We invite everyone present to send in their suggestions for changes or amendments to us for consideration. We also would like all who spoke today to send in writing all suggestions and remarks made by them.

BOB LIST: District Attorney of Ormsby County. Concerning the matter of changes previously spoken of here, that of changing misdemeanors to gross misdemeanors, we think the reasoning behind many of these changes is that the penalty should be greater than is allowed for misdemeanors. Perhaps these should be changed to felonies. There is a great difference between serving a sentence in the county jail and in serving one in the state prison. If a person is to serve additional time, it would be better served in a penitentiary. I would encourage changes to be made so that misdemeanors remain misdemeanors. I appreciate the work that has gone into this bill. Many of us have not had reason to be concerned with the bill up to now. Now we find ourselves right in the middle of it and this is our court of last resort. We do not feel that we are coming in too late in the situation.

SENATOR DODGE: I notice that most of the corrections and objections have been made by peace officers. I would direct a question to Mr. Close. Were these same suggestions made before the commission?

CLOSE: Many of them were. One example relates to the disclosure of material that took place before a grand jury. The bill provides that a transcript be made available to anyone after ten days. This way the public gets a complete picture of what went on instead of just one persons observation.

Each group will feel that certain areas of the bill will not be best for them. Each person will have certain sections that he will think are not good. We have tried to consider the bill and come up with what we thought was the procedure that represented fairly the public interest and also the individual's interest. We feel this is a workable program.

As regards sentencing, we do not feel that everyone should be sentenced to the same time. There is presently in our law and retained in this bill the possibility of charging a man as a habitual criminal. If a young man comes before the court for the first time, rather than give him a sentence that you might give to a person with a long record of arrests, we have provided the court with a spectrum from which to set his maximum sentence. Lesser crimes have been set at 20 years, eligibility of parole after one-fourth of that time. There are provisions for good time credits in the prison. It is felt that the judge, after hearing all these things, should have some discretion to set the sentence. Maybe two or four years from now we can go to a completely indeterminate sentence but we should go to this now.

GRISWOLD: Reno Attorney. I am here to disagree with Mr. Justice Collins and to agree, in a sense, with Mr. Raggio. There are two points that I would like to cover, both based on the assumption that Nevada will go to determinate sentencing, whereby the judge fixes the sentence within a minimum and a maximum. I agree with Raggio in that I fear that a determinate sentence is going to create problems in the state that we cannot foresee. We have many district judges with different philosophies on punishment and other things.

The basis of criminal convictions is the "guilty" plea. This is one of the procedures

that you go through with the district attorney and the defense counsel. Where you have determinate sentencing of 1 to 10 years or 1 to 20 years, I am not sure what the effect will be on plea bargaining. I don't know whether this will result in more time being served or less time.

There is another thing we are going to find without question under the procedure of determinate sentencing, particularly in counties where there is more than one judge. Unless the judges get together and attempt to reach some uniformity of sentencing under similar circumstances, you will find the defendant and defense counsel shopping for the proper judge under which he is going to be convicted. If one judge is more severe, the defendant will see that he is not tried before that particular judge.

The concept is going to be new and there will be a lot of adjustments that we do not foresee at this time. There was a study made in Connecticut to determine the cause of prison unrest. One cause was found to be different sentences for the same offense. The prisoners feel they are unfairly treated and this was the cause for unrest which resulted in prison riots and then judicial reform in Connecticut. They maintain determinate sentencing be provided for an appellate system. I do not think this bill provides for sentence review.

The Nevada Constitution gives the legislature power to advise district courts to fix sentences for persons convicted of crimes. Once convicted, he can't plead guilty and then appeal from his sentence. No constitutional rights on probation if you have determinate sentencing. Under this present code you are giving one man a terrific amount of power to set sentences with no review and all by himself. Two people guilty of the same crime may get sentences completely different. If you are going to go to determinate sentencing, there should be some provision for review of sentencing, whether to increase or decrease the sentence. This is the only way to prevent frivolous appeals. If they run the risk of having their sentence increased there will not be so many appeals.

You are taking the decision of how long a person would serve in prison from one branch of the Parole Board and putting it in the hands of another branch of the Parole Board. Maybe a judge is just as sensitive to peoples' feelings, etc., as anyone. I feel that the committee in the legislature should consider, for these reasons, that if they do take the determinate sentence approach, they do then provide for review. Punishment should not be standardized. I don't feel there is any other way to review sentences than the Supreme Courts. I don't believe in giving this much power to one man.

The D.A. should see the proceedings of the earlier investigations, otherwise he won't know the basis for the charge. They gather the information from the best sources they can but it is not always accurate.

JUDGE BARRETT: Apparently I am the only District Judge here and I feel that I should speak in our defense. I was an advisory member of the committee and the statements made as to the method used for conducting the hearings was accurate.

Something should be said as to the function of the judge in this whole thing. I think I detect an element of distruct of the judiciary. The concept is to allow a man who knows his business, who has listened to all the evidence, who will consider everything carefully, then decide what the maximum sentence should be for that defendant.

Consider two burglaries: One, a habitual criminal, get 1-15 years; the other, a first offender, an 18-year old boy, gets the same sentence. Doesn't it make sense to give the judge discretion to decide what is to be done with this person? That is a judge's function. Why not let him do it? Under the new law the sentence will not be the same in each case. We are dealing with different people.

People in prison will be unhappy no matter what you do. Just the other day I had a letter from a man who is in prison. He is unhappy because he is in prison and there are worse people there than he is. I'll bet there are!

If you have to sentence 3 persons involved in a burglary under our present law, you can give probation to one or two or three. Not all are going to get probation. You just don't treat an 18-year old the same as a 45-year old who has been to prison before.

As regards the pre-sentencing report: I don't really have any objection to the D.A. and defense counsel having the report but think the judge should have the report. It is readied for him, to help him decide the sentence. He should decide what is to be done with it. I personally have never refused to let a D.A. see that report.

If you don't trust me as a district judge, if you think I am going to be unreasonable, if enough people think that for very long, I will not be a judge. If you are going to have a judge, let him be a judge.

SENATOR DODGE: Based on your experience, are there situations other than this age differential which would make you as a judge feel that, although the crime was the same, the circumstances surrounding the commission of it are the same, something that might influence you to give different sentences?

JUDGE BARRETT: Age is only one thing. For example, some guy commits a felony at age 18, then leads a decent life until age 40 and then does some damn fool thing. He doesn't deserve the same sentence as a person who makes a career of robbing, etc.

SENATOR CLIFF YOUNG: Do you have objections to both sides getting the same information, if it is facts?

JUDGE BARRETT: What you say makes sense. It would not make sense not to advise you as a defense attorney of information you need. During committee meetings much attention was given to this point. At every meeting there were representatives from the Bar Association and from the D.A. Association. All of these points were raised. By the way, there is a guilty plea.

In answer to your question: I would prefer, as a judge, to leave the pre-sentencing stuff the way it is and let the judge decide what he wants to do with it. Common sense and a little trust is what we need.

FRANCOVICH: Defense Attorney from Reno. It seems that many more of the comments have been made by prosecutors. I notice Mr. Raggio did not think it necessary to stay and listen to my remarks. I will not respond to Judge Barrett. I almost agree with everything he said. I commend Mr. Close and his committee for the work they did. Generally, this is good legislation.

One thing that concerns me is whether it would be successful if attacked on a constitutional basis. I suppose the committee must have considered this. The constitution says an act must embrace one subject only. In 71 there are many things that are taken into consideration. The law of vagrancy is rewritten, the age of consent is reduced for females involved in rape, etc. Maybe these should be written into separate bills.

I do not want to get into specifics too much at this time. In regard to 81, it provides for appeals for sentence in most cases, with some exceptions. I think some of the language is ambiguous. For instance, State Board of Pardons or State Board of Parole Commissioners. Perhaps this should be considered and the language clarified somewhat.

I think 81 should be expanded somewhat. I think we in the defense field should have the right to waive a jury trial in certain circumstances. I think it could be amended to provide a trial jury would be allowed to entertain a motion for a direct verdict of acquittal. Our law does not provide such a thing now.

DAKIN: About the constitutionality of the bill: This was taken into consideration in the drafting of the bill. There have been two major crime and punishment laws in Nevada, the one enacted in territorial days and the other enacted in 1911. The titles on both were virtually identical with the title on the present bill and both have been considered to relate to the same subject, namely criminal law. The State of Nevada has never sustained a challenge on the grounds of multiplicity of title.

MR. WOOSTER: I thank you all for appearing and speaking to this joint hearing. I urge you to return to return tomorrow, same time, same place. We do have already a definite list of people who want to be heard tomorrow.

The joint hearing adjourned at 4:40 P.M.