MINUTES OF MEETING - ASSEMBLY COMMITTEE ON JUDICIARY, 54th Session, March 9, 1967

Meeting was called to order at 3:40 P.M.

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

Absent: None

AB 275: Permits sheriffs to deputize private detectives to serve certain writs.

Mr. Woody Cole, Peace Officer from Las Vegas, was present to speak against the bill.

MR. COLE: This bill says the sheriff may deputize private detectives to serve writs of attachments, with property value of $5,000 or less, with bond of $10,000. This bond is twice the value of the property but you could go and seize a piece of machinery and while you had it, the man could lose his job and then sue the sheriff for $30,000 or $40,000. We have to answer to the people for our actions in these matters, but the private detectives want to have this power, and they would have to answer to nobody. I think this would be a harassment on the people.

MR. KEAN: Do you happen to know why the sum of $5,000 was picked?

MR. COLE: I don't know. The small claims court is the people's court, but in Las Vegas, it belongs to the collection agencies.

MEL CLOSE: A man gets a judgment and he goes out and enforces it himself, attaches property and so forth. This can be a dangerous thing.

MR. COLE: How would you set the fees for these private detectives?

MR. HILBRECHT: I use a number of private investigators. However they go about fixing their fees, they are about half what you in the sheriff's department ask. Does that answer your question?

MR. COLE: No, it does not.

Mr. Mel Close read a letter which he had just received from Sheriff Ralph Lamb of Clark County, stating his opposition to this bill. He said that he already has the supervision of 275 deputies and he couldn't possibly supervise private detectives as writ servers.

Joseph Bartell, who runs a detective agency in Las Vegas, was present to speak for the bill.

MR. BARTELL: I believe this particular bill is a good one. In a way, it reflects on the sheriff, that he isn't, perhaps, doing a job. The sheriff's department is a good one in the Civil Court but not in the Justice Court. It takes too long to get things done. I know Clark County has grown, and things are getting away from the Constable's office. This bill is designed to alleviate his work load.

No detective agency in Las Vegas are collectors at the present time, and they should not be allowed to become collectors.

MR. HILBRECHT: What hours does the Civil Office work?

MR. BARTELL: From 8 to 5, and many papers should be served after and outside of those hours.

One more point: A complaint I receive quite often is that when a paper is served in the Justice Court, costs are awarded only to the Constable. If the creditor hires someone outside of the Constable's office to serve the paper the cost comes out of his own pocket. But in spite of this, many people hire me to serve their papers.

MR. CLOSE: The sheriff in Clark County recently lost a suit for $50,000. I don't know how many more he has pending against him. Who would be sued if the private detectives did the serving?

MR. TORVINEN: A sheriff often can file a cross action over against the party.

MR. HILBRECHT: I have letters from 15 to 20 attorneys urging this kind of action. The sheriff is right at the top of his budget and will have to divert some of his men to police work. I think what he would prefer to see is to have the number of people enlarged that can do this work.

The problem might be answered by making the bond larger. I think $50,000 is large enough.

MR. WHITE: What would be the cost difference between a $50,000 bond and a $100,000 bond?

MISS DUNGAN: What kind of fees do the private detectives charge? Are they more than the sheriff's office would charge?

MR. HILBRECHT: No, it is less, and they are available at more hours of the day. For instance, they can pick up a car when it is likely to be at home, say around 8:30.

MR. TORVINEN: I don't think it should be limited to this group of people listed in the bill. We shouldn't say the sheriff can only do such and such. He should be able to appoint any special deputy that he wants to.

MR. WOOSTER: Why is it necessary to have this special act to license private detectives/ The sheriff now has the power to deputize people. Why is the bill necessary?

MR. HILBRECHT: Lamb is hesitant to deputize anyone unless he is a hired employee of the sheriff or a regular paid employee of some business. People of an independent business like private detectives does not come within the area of his acceptability.

MR. WOOSTER: Do we accomplish anything by this bill? We can't possibly force the sheriff to appoint these people.

MR. HILBRECHT: Maybe we should increase the bond and make it so he could appoint these people by request.

MR. DAYKIN: Service of process can be done by anyone over 21 now.

MR. WOOSTER: Perhaps we are premature in considering this, since you are planning to amend it anyway.

MR. HILBRECHT: This is an urgent need in Clark County. Everyone realizes there is a bottle neck.

AB 81: New criminal procedure law.

SECTION 143

Mr. Bryan's objection: Section 143 would seem to make the use of a deposition admissible

at the time of trial upon a showing that the deponent was out of State. I believe that an additional burden should be cast upon the prosecution to establish that due diligence has been undertaken to secure the attendance of the out-of-state witness. Cross examination during the time of the deposition may be based upon considerable less information available to defense counsel than cross-examination at the time of the trial when the discovery order has been entered and when other witnesses who may not have testified at th preliminary hearing have been called by the State. The use of these depositions, therefor should be as a last resort rather than as a substitute for direct confrontation by the witness at the time of the trial.

MR. HILBRECHT: I think this should apply to both the defendant and the prosecution.

MR. WOOSTER: Was there discussion of this by the study committee?

MR. DAYKIN: Yes, and the committee held to the section as it is stated. This section is taken word for word from 15E of the Federal Rules on Criminal Procedure.

MR. WOOSTER: There has been some interpretation of these Rules, and our action yesterday was to adhere basically to these Rules.

MR. HILBRECHT: What is the relationship of this kind of section allowing deposition with the confrontation?

MR. DAYKIN: Federal Courts accept this deposition.

MR. HILBRECHT: If we were to adopt, it should cut both ways.

MR. DAYKIN: I agree, but they wanted to stay with the Federal Rules. These were extensive revised by the U.S. Supreme Court July 4, 1966.

Mr. Schouweiler moved to reject Mr. Bryan's comments
Mr. Lowman seconded
Motion passed, with Mr. Hilbrecht voting No

SECTIONS 145-147

The D.A.'s comment: If taken together these provisions are probably acceptable. The matter of discovery in criminal cases is, of course, most controversial since it has largely been a one-way street proposition, the defendant being required to produce nothing. In addition, however, the defendant should be required to disclose prior to trial at a reasonable time whether or not he intends to rely on an alibi as a defense and to furnish the name and addresses of witnesses who will corroborate this alibi. In many cases if this is legitimate, the expense of a trial can be avoided.

MR. WOOSTER: I would like to ask Mr. Daykin about the discussion in the committee on this.

MR. DAYKIN: This was discussed extensively for several hours on more than one occasion. Mr. Bryan's point that under this law this would be less liberal than what he is getting now was concurred in by several Clark County lawyers, but many people thought it was much more liberal than what they have in Washoe County, so there you are.

MR. WOOSTER: Either Judge Collins or Judge Barrett made the point in the hearings that discovery should be uniform throughout the state and the section would enable this to be done.

MR. HILBRECHT: The discovery section of the Federal Rules is quite separable from the rest without upsetting anything. If we were to leave the law as it is, where the judge has discretion, we would not be upsetting the rest.

MR. DAYKIN: That is true, but we would have no standard of reference.

MR. HILBRECHT: I disagree. We would have the same one we have now. The length of the magistrate's foot is not a very persuasive argument. Most of those who testifed were not favorable to these sections. My feeling is that we do not need the Federal Rules of Discovery.

MR. WOOSTER: The D.A.'s statement was generally favorable. Both judges spoke in favor of this and several of them spoke in favor of this in the study committee, according to Mr. Daykin.

MR. KEAN: Where discovery is used and the evidence mounts, how often does the defendant change his plea?

MR. WOOSTER: Quite often this obtains a change of plea.

MR. HILBRECHT: That is not a fair answer to the question. Usually when it comes to giving defense counsel you look at the evidence. If it is a strong case, the D.A. is usually delighted to show it and this forces the counsel to a deal of some kind, unless he is locked in.

MR. WOOSTER: This would formalize the procedure for this exchange of information.

MR. HILBRECHT: I think it would restrict it. I don't think we need it. No defendant is going to utilize it. In most areas we have some discovery.

MR. WOOSTER: I think it would liberalize it in Washoe and it is a good uniform system.

MR. HILBRECHT: To retain this is to change the present law.

Mr. Lowman moved to reject the comments and suggestions
Mr. Swackhamer seconded
Motion passed with Lowman, Schouweiler, Torvinen, White, and Wooster voting Aye and Hilbrecht, Swackhamer, Dungan and Kean voting No

SECTION 152

Objection: The D.A.'s don't want to lose the power to issue subpoenas. They want to be able to keep the blanks on hand.

MR. DAYKIN: Once again, this corresponds verbatim to the Federal Rule. Nevada practice in the past has been to allow the District Attorney to issue his own subpoenas.

MR. WOOSTER: Why was it thought necessary to change the rule?

MR. DAYKIN: Simply to conform with the Federal Rule. We thought no substantive hardship was created.

MR. KEAN: Didn't we have this last session?

MR. DAYKIN: No, this is an old act.

MISS DUNGAN: Where does a defense attorney go now to get subpoenas?

MR. DAYKIN: To the clerk of the court. He can get them in blank. This bill would make the District Attorney do the same thing.

MR. TORVINEN: The District Attorney is a public officer and the defendant is not.

Mr. Hilbrecht moved to reject the proposed amendment.
Mr. Schouweiler seconded
Motion passed unanimously

SECTION 153

D.A.'s Comments: The present law should be retained with reference to bringing a witness from the state prison or from any other jail. This is presently accomplished by making an application to the court and obtaining an order in the nature of a subpoena. There is no need to have a hearing upon a motion since each party should have the right to call any witness whether he be incarcerated or not.

MR. DAYKIN: This is not new law. It is existing law that is classified to refer to District Court only.

MR. TORVINEN: As I read this, all you have to do is show the reality of the testimony.

Mr. Lowman moved to reject the suggestions for a proposed amendment.
Mr. Kean seconded
Motion passed unanimously

SECTION 154

D.A.'s Comments: In addition, the D.A. should have the right to issue a Subpoena Duces Tecum, or the defendant should have a similar right, to require the delivery of books and documents to their respective offices for examination prior to trial. This is most necessary as a practical matter in order to ascertain the nature of the evidence prior to trial and in the course of an investigation.

MR. DAYKIN: We should go the same way on both sections.

Mr. Lowman moved to reject the proposed amendment
Mr. Hilbrecht seconded
Motion passed unanimously

SECTION 155

D.A.'s Comments: The present law does not require the tender of fees in matters of criminal subpoenas. This should definitely not be required on subpoenas issued by the state. In large counties it is often necessary to issue subpoenas to a long list of police officers for trials anticipated but which for many reasons result in guilty pleas and postponements and where the trial is dismissed for some reason. This would cause a great and unnecessary expenditure of funds for many witnesses who undoubtedly would not testify.

MR. DAYKIN: We followed literally the language of Federal 17 D. The matter of language was not studied in the committee. We could strike language relating to summoning of

witnesses if you so desire. It depends on whether you want the witness to come in free or if you want to pay him. This is in criminal cases.

MR. HILBRECHT: The way Civil Service works: They have a check in their pockets, but they do not give it to you unless you demand it.

MR. TORVINEN: In Washoe County, if you give the sheriff a check, he gives it to the witness. I feel they are entitled to it after they appear but not at the time of the subpoena.

Mr. Hilbrecht moved to amend Section 155 by removing "tendering to him the fee for 1 day's attendance".
Mr. Torvinen seconded
Motion passed unanimously

MR. SWACKHAMER: What if one witness doesn't show up and said he had no money to make the trip. Would he be guilty of contempt?

MR. DAYKIN: There is a limitation of 100 miles.

MR. HILBRECHT: They would continue the case and send someone out for him.

SECTION 176

Objection: It is felt that the present system of each attorney conducting the entire examination of prospective jurors should be retained rather than the court conducting this examination.

MR. DAYKIN: This corresponds to Rule 24 A of the Federal Rules and it was discussed very extensively in the committee. The only difference is that the Federal Rule says "may" and the committee inserted the word "shall". The statute as tendered is a compromise between discretion and no discretion made in the committee.

MR. TORVINEN: In criminal cases you have to get all twelve jurors to agree. In Civil Court you need only three-fourths of them agreeing.

MR. WOOSTER: It is not the same burden.

MR. SWACKHAMER: This language seems reasonable.

Mr. Hilbrecht moved to reject the proposed change
Mr. Lowman seconded
Motion passed unanimously

SECTION 174

This section was brought up at Mr. Torvinen's request.

MR. TORVINEN: The present practice is that if you don't demand a jury trial vigorously you don't get it. This lumps the rules of District Court and Justice Court together. I can see that this will cause havoc in Reno and Las Vegas. If my interpretation correct?

MR. DAYKIN: Yes, it is.

MR. TORVINEN: Whenever a petit larceny case comes up, you will be in trouble, unless you get a waiver of jury trial. I can see some problems in the administration of justice.

MR. DAYKIN: I don't believe this facet actually engaged much attention of the committee. The next section was intentionally added by the committee. No one thought of waiver of jury in the Justice Court.

MR. WOOSTER: What do you suggest as an amendment?

MR. TORVINEN: Do you think people charged with misdemeanors should really have this right?

MR. DAYKIN: The present section corresponds to Federal Rule 23 A and supercedes rules applying to Justice Court.

If we had any lack on the study committee, it was a lack of anyone involved in the Justice Court.

Mr. Torvinen moved to insert language similar to the present statute on this, 186.00, in section 174 and change section so that the language in the bill applies only to District Court.

Mr. Lowman seconded
Motion passed unanimously

SECTION 180

D.A.'s Comments: It is recommended that a provision be added that would not necessitate the trial beginning anew and a new jury being empaneled in this type of situation. The law should permit the continuance of the trial with less than twelve jurors. There is no constitutional requirement for a jury of any certain number of people.

MR. KEAN: Does it limit the number of jurors that could be out?

MR. WOOSTER: No.

MR. DAYKIN: You would have to put a provision on it that if the parties were in agreement the trial could continue. Section 175.

Mr. Kean moved to reject the objections.
Mr. Lowman seconded
Motion passed unanimously

MR. DAYKIN: There are two ways around this, 2 in section 180 and 1 in section 175.

MR. WOOSTER: We now have 68 bills in our committee. Can we meet tomorrow from 1 to 3?

Miss Dungan, Mr. White and Mr. Lowman could not.

MR. WOOSTER: What we could do is consider other bills than AB 81. We have some that are relatively non-controversial.

SB 345
SB 256
SB 180
SB 71
SJR 22
SJR 12
AB 437

MR. KEAN: I would like to ask Mr. Daykin: Is it unconstitutional to get 5 Justices of the Supreme Court? With an election and interim appointments?

MR. DAYKIN: No, I don't think it would be unconstitutional. It is a close question but the three top authorities on it are the three incumbents. I think it is reasonable to expect that they would uphold such an action.

SECTION 189

Mr. Bryan's Comments: This gives to the trial Judge the right to state the testimony. I believe that this constitutes an unwarranted intrusion upon the trier of the fact's determination of what the facts are in the case. Moreover, I believe the Judge's recollection is subject to human frailty and his statement of the testimony may, in a given case, be clearly erroneous. By reason of the exalted position the trial Judge holds, his statement of the testimony may be accepted as the correct version and the jury may, therefore, defer to his recollection rather than their own, or worse, decline to call for a read back of the stenographically recorded testimony by the court reporter in case of doubt.

MR. DAYKIN: This section was preserved from the present Nevada law. It was taken verbatim from existing statutes.

MR. KEAN: What position is an attorney in to question the judge's words?

MR. WOOSTER: Very poor.

MR. TORVINEN: "state the testimony". What does this mean?

MR. DAYKIN: That he could state back to them what the testimony was. I have never seen a case in which it was construed in spite of the length of time it has been with us. He can instruct them what the witness said but he can't tell them to find such and such a fact

MR. TORVINEN: This wasn't discussed by the committee?

MR. DAYKIN: No

MR. SWACKHAMER: If this has been good all these time, why should we louse it up now?

MR. KEAN: Mr. Daykin, do you think that the proposed revision of the courts which Judge Barrett spoke of will ever come to pass? If we are going to get rid of senile judges then there isn't much harm here.

MR. DAYKIN: Judges have been dealing with this section ever since statehood. I have never even heard a discussion on it.

MR. TORVINEN: Some of the wording bothers me. I would like to hold it over. On line 11, starting with "if" I would like to strike all that out. Page 31, line 11.

MR. KEAN: Can the counsel ask for yesterday's testimony to be read?

MR. TORVINEN: I have never heard of it being done. The jury can ask for testimony to be reviewed for them.

MR. WOOSTER: I agree with Bill. Why should we change it?

Mr. Lowman moved to retain present language
Mr. White seconded

MR. WOOSTER: I can see changing by striking line 11 "unless requested by either party".

Mr. Lowman made that a part of his motion

Motion passed unanimously

Meeting was adjourned at 5:30.