ASSEMBLY COMMITTEE ON JUDICIARY - 56th SESSION, 1971

MEETING MARCH 10, 1971

The meeting began at 2:30 p.m.. Present: Miss Foote, Messrs. Fry, Olsen, Dreyer, May, Torvinen, Lowman, Kean and McKissick. None absent.

AB 136 - reduces jury to six except for capital offenses, and verdict to less than unanimous.

AB 406 - Reduces number of jurors required.

SUPREME COURT JUSTICE GORDON THOMPSON feels the thrust of the bills is worthwhile. Utah has been operating on a six-man jury system in criminal and civil litigation for three or four years, and the judges in Utah say it is a remarkable success. It expedites trials and reduces the expenses incident to jury trials.

The Nevada Supreme Court amended its rules of civil procedure in 1964; Rule 8 provides that upon stipulation of the attorneys, trial may be had before a jury of eight or four.

During a jury trial with 12 jurors, approximately 50 jurors are called for the first day from whom a jury is chosen. The county is required to pay the first day attendance of all 50. For a capital case a larger venire is required. The experience in Utah cuts the expense in half. Impaneling goes more rapidly with six.

Utah has no indication there has been a lessening of justice accorded to the parties in the law suit. There is no magic in the number of 12, or 6, or 18. The concept is to get a reasonable cross section of the community to decide the case. Our courts are clogged and the public is upset about the manner of handling judicial process.

In answer to a question from Mr. Olsen, Justice Thompson said his opinion applies to both civil and criminal trials.

Mr. Fry noted the provisions of AB 136 require that 5 of 6 jurors agree with the verdict, or in capital cases 12 jurors would

be retained, and requires that 10 of 12 agree. He asked Justice Thompson's opinion on the matter of the verdict being less than unanimous in a capital case. Justice Thompson said he had no personal opinion on the matter, and said it would make no difference if the capital case required 6 or 12 jurors.

Mr. Lowman asked if the Supreme Courts in other states received more appeals as a result of the reduced number of jurors. Justice Thompson replied there was no indication there were more appeals from six man jury cases than from 12 man jury cases.

Mr. Lowman asked if Utah had indicated the amount of savings from a six man jury system. Justice Thompson did not recall the exact amount.

Mr. May noted the provisions in the statutes that the parties may agree to a lesser number of jurors, and asked if there were any indications if parties had adopted a lesser number of jurors for trial.

Justice Thompson replied there is a built-in resistance to changes of almost any kind in procedural aspects to which attorneys have become accustomed. They have a feeling they will lose a right for their clients if the case is not tried before 12 jurors.

Mr. May suggested parties may not be aware of the present provisions, and said a possible alternative would be an affidavit signed by the parties that they are aware of this statute and let the decision be theirs. Justice Thompson felt the attitude of the parties would be controlled by the attitude of their attorneys.

Mr. Olsen noted another aspect is that people do not like to be called for jury duty because they are taken away from their jobs, and feel they are not adequately compensated.

Mr. Lowman asked if six jurors are acceptable to the other members of the Supreme Court. Justice Thompson stated the members of the court have not discussed this.

Mr. Kean asked about the percentage of civil cases compared to criminal cases, and how many court days were taken up with jury trials. Justice Thompson said he understands in Clark County it is almost impossible to get a civil case to trial because of the criminal calendar, and in Washoe County perhaps 70% of the trials are criminal.

MR. BRIAN FIRTH stated Article 1, Section 3 of the Constitution guarantees the right to jury, and should remain inviolate.

MRS. DEE ARTLIP, TRUCKEE RIVER REPUBLICAN WOMEN'S CLUB, and NORTHERN NEVADA ASSOCIATION OF VOTERS, stated that saying persons do not want to serve on juries is a poor excuse of advocating the reduction of something that is an inviolate right. Every person has the right to a trial by a 12 man jury, and the cost that may be saved by reducing a jury is not worth it.

MR. EDDIE SCOTT, RACE RELATIONS CENTER, AND NAACP, stated if the jury is reduced there is a lesser chance of having a minority member on the jury.

MR. CURTIS FITCH stated the minority groups sould feel it a privilege to serve on a jury, but they aren't summoned to serve, and he felt that lessening the number of jurors would further reduce the minorities' opportunity to serve. He opposed the reduction.

THOMAS D. BEATTY, DEPUTY PUBLIC DEFENDER, CLARK COUNTY, spoke against reduction of number of persons on the jury, stating with a six man jury the possibilities of seating a member of the minority races on the jury are reduced.

Reducing the number of jurors is reducing the standard of proof necessary to convict. Proof beyond a reasonable doubt to six jurors is different from proof beyond a reasonable doubt to 12, jurors, since it should be easier to convince six persons of guilt. The same problem arises with a less than unanimous verdict.

Mr. Beatty stated the argument of saving money with a reduced number of jurors is largely illusionary. His office has between 50-60% of all persons accused of felonies in Clark County. The office has approximately 2,000 open files at any given time. However, the office has had only three jury trials so far this year. Cases are set for trial, or many times jury trial is waived. A plea is sometimes entered to a reduced charge or a case is dismissed. There are so few criminal cases that actually go to a jury trial, the savings in dollars would be slight.

Mr. Beatty said California has a provision for a six man jury on misdemeanor charges. The chances of having one person with reasonable doubt as to guilt is substantially higher with a 12 man jury than six man jury.

AB 381 - Permits gaming licensees to question and detain suspected cheaters.

LES KOFOED, GAMING INDUSTRY ASSOCIATION, said the association is unanimously in favor of the bill, and stated that slot

machine thievery has become progressively worse. The bill will prove to be a necessary tool for solving the problem.

MR. WAYNE MARTIN, of CLUB CAL-NEVA, exhibited to the committee various cheating devices and counterfeit coins used in slot machines by cheaters. Mr. Martin stated a book circulated to casinos contains information about 900 known cheaters and each month ten to 20 more cheaters are added to the book. There are cheating schools being operated. He stated there is no protection under the law for casino management to detain cheaters, so the cheaters may go from casino to casino each night stealing from machines. The only way the police can detain the cheaters is an arrest for vagrancy, which carries a $50 bail, so they can be out and cheating again within an hour.

One cheater never makes less than $50,000 per year cheating. Another makes $3,000 per month from just one casino. Cheaters are taking approximately Ten Million Dollars each year from casinos, and the state is losing revenue on this money.

Casinos will not stop and question cheaters because they are afraid of suit. The bill is worded to avoid harrassing people, and is badly needed by casinos.

Mr. Lowman asked if casino operators would use the bill. Mr. Martin said he guaranteed they would. Posting the sign in the casino would be a help. When word gets out about the law, it will be a deterrrent to cheaters.

Mr. Torvinen said the wording in AB 381 was taken from the shoplifting statute of Nevada which provides the same treatment for people suspected of shoplifting. The "stop and examine" law was upheld by the Nevada Supreme Court.

MR. PETE CLADIANOS, SANDS MOTOR INN AND CASINO, said they have had trouble with cheaters from the day the casino opened. The casino has watched the cheaters through one-way mirrors and personnel have physically held the cheaters for police, but a conviction has never been obtained, because the police are afraid to make an arrest. The police feel they are not protected under the law.

MR. JOHN GIANNOTTI, HARRAH'S CLUB, supports the bill, stating it gives casinos a psychological advantage over thieves.

MR. ROBBINS CAHILL, MANAGING DIRECTOR, NEVADA RESORT ASSOCIATION, stated the problems have been well pointed out, and his association strongly supports the bill.

ROBERT WISE, VALLEY DISTRIBUTING COMPANY, which company distributes slot machines to casinos, stated they find all sorts of cheating devices used in the machines, and the bill will be a great start toward protecting the casino operators.

AB 217 - Provides a bail hearing for offenses committed while on bail; and

SJR 8 - Proposes Constitutional amendment to deny bail to persons charged with felony while admitted to bail on separate charges.

SENATOR CHIC HECHT stated that former Clark County District Attorney requested SJR 8 and it is endorsed by present Clark County District Attorney Roy Woofter. It is intended to solve the problem of an accused being released on bail and going out to commit another crime while on bail. Arizona has just enacted a constitutional amendment to the same effect, and other states provide for denying bail on certain types of offenses. Law enforcement people are in favor of the bill.

DENNIS E. "MIKE" EVANS, PRESIDENT, NEVADA DISTRICT ATTORNEYS' ASSOCIATION, stated both measures reflect the unanimous feeling of the members of the association. The bills are intended to deal with the professional criminal. The provisions will prevent the criminal from continuing to finance his criminal activities by further commission of crimes.

JAMES HULSE, Ph.D., representing AMERICAN CIVIL LIBERTIES UNION, expressed his apprehension of SJR 8 was passed. The ACLU is not in the business of defending criminals, but is dedicated to the total principle of defending the basic rights in the Bill of Rights. If before conviction a person is denied bail, it implies guilt. If the object is to keep people from committing a further crime while on bail, a measure should be drafted to achieve that objective. This measure is too broad, and denies the basic right of bail.

Regarding AB 381, Dr. Hulse stated the bill is also dangerous from the viewpoint of civil liberty, in its provision that a person may be detained without evidence of having committed a crime.

Mr. Torvinen re-emphasized his remarks about this type of legislation being upheld as constitutional.

JAMES GUINAN, BOARD OF GOVERNORS, STATE BAR OF NEVADA, stated the Board of Governors opposed SJR 8. He agreed with Dr. Hulse that it is a denial of a traditional right. The objection might be obviated by giving the court the discretion to deny bail if the circumstances warrant it, but this requires that bail be denied

regardless of circumstances of circumstances in the case. The court has no discretion to grant bail even under extenuating circumstances.

Regarding AB 217, Mr. Guinan stated that would be a violation of the Constitution, as it standsnow, because it provides a person shall be entitled to bail unless it is a capital case. If AB 217 passed, it would be held unconstitutional.

Mr. Kean asked if Mr. Guinan would approve of a constitutional amendment reading something like AB 217. Mr. Guinan replied yes, with some legislative standards which would describe circumstances under which the court could grant or deny bail.

MIKE EVANS, re SJR 8, stated the District Attorneys' Association would also be concerned about the resolution, notwithstanding a constitutional test, to the extent that it would make some kind of automatic determination. That is why he wanted it read in conjunction with AB 217.

THOMAS BEATTY said the bills and resolutions dealing with bail are approaching the problem from the wrong direction. The district attorneys are interested in getting the professional criminal behind bars, and the answer to the problem is speeding up the process between arrest and trial. This can be done constitutionally to solve the problem, and is the only proper approach.

AB 356 - Extends bail forfeiture deadline and provides for exoneration and termination of obligations of sureties.

TED EMBRY, ESQ., on behalf of the SOUTHERN NEVADA BONDING ASSOCIATION, spoke in favor of the bill, stating that present 30-day limit does not give the bondsmen time to bring back the defendant who has left the state, and 180 days would be sufficient time. The bondsmen cannot request an extension of time, because the 30-day limit is statutory.

DAVID KENT,ACE BONDSMEN, Las Vegas, supported the provisions of the bill.

WILLIAM D. EMBRY, SR., Bill Embry Bail Bonds, Las Vegas, told of problems the bondsmen have had trying to bring a defendant back within 30 days, and supported the provisions of the bill.

AB 419 - Changes time for parole eligibility.

MR. BRUCE HARNOIS, Department of Parole and Probation, stated if the bill passes there would be little usefulness for the parole department. It would leave only those people to be paroled who had

mandatory years of time before they could see the parole board. He stated the spirit in which the bill was proposed was in the indeterminate sentence, for guidelines, but that the judge generally sentences a defendant for a definite number of years.

Mr. Fry said he thinks the determination still has to be made. After a prisoner serves one-fourth of his sentence, less his good time credits, he is eligible to see the board.

ASSEMBLYMAN FRANCES HAWKINS stated her intent in the bill was to insure that a prisoner served at least the minimum sentence which is provided by statute. If a person is sentenced from 10 years to life in prison, he should be required to serve the minimum of ten years before he is eligible for parole. If there is a space in the sentencing provision, he would have to serve the minimum term, and his good time credits would determine if he got out.

Mr. Harnois stated the majority of sentences to the prison are determinate sentences, and indeterminate sentencing is used only as a guideline.

AB 491 - Provides for expungement of certain criminal records.

MRS. JEAN FORD, STATE PRESIDENT, LEAGUE OF WOMEN VOTERS, stated the league is mainly interested in expungement of juvenile records, but their research would apply to this bill. They are interested in SB 32 relating to expungement of juvenile records, and there are two other senate bills regarding expungement: SB 466 relates to expungement of drug violations, and SB 430 relates to expungement of arrest records. She feels AB 491 is a better bill than the latter two senate bills.

The league is concerned that there be a definition of the word sealing, indicating if the record should be simply removed to another file, or should be actually sealed with wax or tape.

She is concerned with the provisions on page 2, lines 27 and 28, providing that a person could say he had not been convicted of a crime or arrested, and exhibited employment forms from a casino and the University of Nevada which had a space to indicate arrest records. She said the limitation of inquiry provision should apply to employment applications. The wording on the forms could read, "Have you ever been arrested and convicted of a crime that has not been erased or expunged?"

Mr. Guinan stated the Senate Judiciary Committee decided in connection with the evidence code that the defendant in a criminal trial would be required to answer if he has been convicted, but he would be allowed to explain if the record was expunged. If the evidence code is passed containing this provision, this bill would be in conflict as far as trials are concerned.

Mrs. Ford stated the statement of policy of expungement should be explained to the offender somewhere along the way.

MICHAEL FARRIS said he had researched expungement and sealing of criminal records. The purpose of the bill is good, but there are some portions that need strengthening.

The bill provides that a record may be sealed only in the jurisdiction of the court. The sealing of records pursuant to court order would not reach the FBI records or California CII. No district Court would have jurisdiction to go this far.

Mr. McKissick stated the arresting authority can request the FBI to destroy the offender's fingerprint card and they will cooperate, and so will the CII.

Mr. Farris stated there is a difference between sealing and expungement. Expungement would be a total destruction of the record and this bill doesn't provide that.

Mr. Kean said the thought behind using the term "sealing" was to provide for the case in which the defendant would want to open the file himself. Mrs. Ford said she found good arguments for not destroying the file, and sealing would be preferable. A provision should be inserted stating the defendant may look at the record.

Mr. Farris stated the bill may to some degree hinder the habitual criminal act as well as possibly hindering NRS 48.020 providing for impeachment of witnesses regarding previous criminal convictions.

Mr. Kean announced that the subcommittee appointed to consider AB 107 had met and decided to have a substitute bill drafted instead of trying to amend the present bill. He expects the new bill to be ready by Monday.

Mr. Fry announced the committee would hold a meeting on Friday to clear up as many bills as possible.

There being no further business, the committee adjourned at 5:07 p.m.

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# ASSEMBLY

AGENDA FOR COMMITTEE ON JUDICIARY

Date March 10 Time Adjournment p.m. Room 240

| Bills or Resolutions to be considered | Subject | Counsel requested* |
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| SJR 8 | Proposes constitutional amendment to deny bail to persons charged with felony while admitted to bail on separate charge. | |
| AB 217 | Provides a bail hearing for offenses committed while on bail. | |
| AB 356 | Extends bail forfeiture deadline and provides for exoneration and termination of obligations of sureties | |
| AB 136 | Reduces jury to six except for capital offense, and verdict to less than unanimous. | |
| AB 206 | Provides that negligent killing of person while hunting constitutes manslaughter. | |
| AB 214 | Enacts the Agreement on Detainers. | |
| AB 259 | Clarifies and supplements alibi witness procedure. | |
| AB 302 | Restricts withdrawal of defense counsel. | |
| AB 335 | Permits police officers to use court orders to obtain certain evidence from suspects. | |
| AB 381 | Permits gaming licensees to question and detain suspected cheaters. | |
| AB 406 | Reduces number of jurors required. | |
| AB 419 | Changes time for parole eligibility. Bruce Harris | |
| AB 491 | Provides for expungement of certain criminal records. | |
| AB 505 | Permits certain county commissioners to prohibit private practice of law by district attorneys and deputies and to establish salary schedule. | |

*Please do not ask for counsel unless necessary.

## HEARINGS PENDING

Date _____ Time _____ Room _____
Subject _____

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Subject _____