SENATE JUDICIARY COMMITTEE

MINUTES

March 10, 1971

The Chairman called the meeting to order at 9:40 a.m.

Committee Members Present:	Chairman Monroe Senator Close Senator Dodge Senator Foley Senator Swobe Senator Wilson Senator Young
Others Present:	Russ MacDonald, Director, Legislative Counsel Bureau Mike Evans, President, District Attorneys Association Bill Macdonald, District Attorney, Humboldt Co. Jim Guinan, State Bar Association Rick Ahlswede, Deputy Attorney General Robert List, Attorney General

S.B. 399 - Removes conflicting requirement that district judge appoint attorney to represent indigent criminal defendant at preliminary examinations.
Committee on Judiciary

Russ MacDonald explained that this is the same correction as is in the county court bill. The purpose of this is a back-up in case the county court bill does not go through.

Senator Dodge made a motion to "do pass." Senator Wilson second the motion. Motion carried.

S.B. 400 - Permits grand jury in absence of judge to return presentment or indictment to clerk of court.
Committee on Judiciary

Russ MacDonald explained that this was requested by the District Attorney in Humboldt County. It would provide that they don't have to bring the grand jury back in before the judge for the indictment or presentment. They could do it before the clerk of the court. This would save them time and money.

Senator Foley suggested amending it to read: "to the clerk of the court in open court." on line 5.

Senator Wilson made a motion to amend and "do pass." Senator Young second the motion. Motion carried.

S.B. 401 - Clarifies voting power in nonprofit cooperative corporations. Committee on Judiciary

Russ MacDonald explained that this was brought to his attention by the Secretary of State. It attempts to bring this section and Section 81.100 into line by limiting 81.040 to the property rights and leaving the voting powers in 81.100.

Senator Young made a motion to "do pass." Senator Wilson second the motion. Motion carried.

S.B. 402 - Revises ambiguous language in law concerning disqualification to serve as executor of estate of deceased person. Committee on Judiciary

Russ MacDonald explained that this would correct this section grammatically only, and would not change the thrust of the law.

Senator Wilson made a motion to "do pass." Senator Young second the motion. Motion carried.

S.B. 403 - Creates civil search warrant for inspection of premises. Committee on Judiciary

Russ MacDonald explained that this was suggested by Justice Batjer because the NRS is silent with respect to a warrant for civil search. Senator Young felt concerned that it might be used as a fishing expedition for a more serious crime. Russ MacDonald suggested we call Justice Batjer in for further testimony.

No final action was taken.

S.B. 404 - Repeals unconstitutional provision governing time for trial of defendant held in another jurisdiction. Committee on Judiciary

Russ MacDonald explained that this section, 178.558, was held unconstitutional by the supreme court in 1969.

Senator Dodge made a motion to "do pass." Senator Swobe second the motion. Motion carried.

S.B. 405 - Establishes new procedure for sending notification of criminal appeal to Nevada supreme court.
Committee on Judiciary

Russ MacDonald explained that this bill would incorporate Sections 177.195 and 177.075, and repeal Section 177.195 as a matter of placement more than law.

Senator Wilson made a motion to "do pass." Senator Swobe second the motion. Motion carried.

S.B. 406 - Clarifies punishment of habitual criminal.
Committee on Judiciary

Russ MacDonald explained that he felt that since the habitual criminal legislation was proposed, we should determine a maximum penalty because the computations on the maximum punishment can get into pretty high figures. This would make the maximum 10 - 20 years.

Senator Foley made a motion to "do pass." Senator Swobe second the motion. Motion carried.

S.B. 407 - Limits the display of obsene material.
Committee on Judiciary

Russ MacDonald explained that this would set out further limitations for the display of obsene materials to minors.

Senator Close made a motion to "do pass." Senator Swobe second the motion. Motion carried.

S.B. 408 - Corrects penalty for offering false evidence.
Committee on Judiciary

Russ MacDonald explained that this would put a minimum penalty in this section.

Senator Wilson made a motion to "do pass." Senator Swobe second the motion. Motion carried.

S.B. 409 - Enacts saving clause for repealed criminal statutes.
Committee on Judiciary

Russ MacDonald said that he had always been bugged by the fact that there is nothing in the code that specifically says what to do with a case that is pending. This would provide retroactive application to a subsequent law unless otherwise expressed in the statute.

Senator Dodge made a motion to "do pass." Senator Swobe second the motion. Motion carried.

S.B. 410 - Eliminates conflict in law on juvenile correctional institutions. Committee on Judiciary

Russ MacDonald explained that the printer repeated Section 710.715. He felt that would imply repeal and so repealed Section 710.720.

Senator Dodge made a motion to "do pass." Senator Swobe second the motion. Motion carried.

S.B. 376 - Deletes arrest requirement in implied consent law. Committee on Judiciary

Chairman Monroe, Senator Dodge, and Senator Wilson wondered whether by passing this bill, we would be inviting abuses by the police to indiscrimately give blood tests without having to arrest the person, or if it would be beneficial to the driver in that if there is not a high alcohol level, there would be no subsequent drunk driving arrest.

No final action was taken.

The following testimony was heard on the bills proposed by the District Attorneys Association and introduced by the committee.

S.B. 183 - Clarifies alibi witness law. Committee on Judiciary

Mike Evans testified on this bill. It would provide that the notice of evidence to establish an alibi given by the defendant include the time where he claims to have been as well as the place, and a list of prospective witnesses and their addresses.

Senator Wilson made a motion to "do pass." Senator Swobe second the motion. Motion carried.

S.B. 184 - Enacts felony drunk driving law. Committee on Judiciary

Mike Evans testified that Chapter 484 was removed last session and by removing it they repealed the felony drunk driving charge. This would bring back felony drunk driving so that the district attorneys could prosecute on this. Now they can only prosecute for involuntary manslaughter, and only in the case of death.

Senator Young objected to the broad language "bodily injury" and cited an example of getting your foot runover. Mike Evans suggested adding the word "serious" on Line 7 before "bodily injury."

Senator Dodge made a motion to amend and "do pass." Senator Wilson second the motion. Motion carried.

S.B. 227 - Permits voluntary dismissals in criminal cases without baring new proceedings.
Committee on Judiciary

Mike Evans testified that under the existing law, dismissal of a criminal complaint bars the bringing of the same charge. This is not a very successful maneuver on the part of the prosecution and tends to harass the defendent.

Senator Wilson made a motion to "do pass." Senator Dodge second the motion. Motion carried.

S.B. 349 - Permits appeal from pretrial district court orders in criminal cases.
Committee on Judiciary

Mike Evans testified that this was one of the most important bills requested by the District Attorneys' Association. The way the statute reads now, it only authorizes an appeal to the supreme court on a pretrial motion to supress after a final disposition of the district court, which means it would have to be thrown out of court or on a final judgment after the trial. In either case, they would be blown out of the water. Last session the legislature repealed Section 177.065 which would allow a mute appeal. In most cases the D.A. has no leg to stand on if there is a motion to supress granted.

This bill would allow them to appeal a pretrial motion to supress, which is what they are most concerned about. The Attorney General, Bob List, said that in most instances the granting of a motion to supress in a narcotics case is tantamount to a motion to dismiss.

Senator Young felt that this bill would not allow for a speedy trial and the defendant would have to be incarcerated until a decision was made by the court whether or not the motion was appealable. Senator Foley suggested that the Attorney General, the district attorneys, and committee members have an informal discussion with the supreme court justices to get an understanding of priorities so that these decisions be considered in a timely manner so that it would not delay a trial.

Senator Young felt that we should have testimony from the public defenders and defense counsels.

No final action was taken.

Meeting adjourned at 11:00 a.m.

Respectfully submitted,

Eileen Wynkoop

Eileen Wynkoop, Secretary

Approved:_____

3-10-71

Carson City - Michael Fondi
Churchill - Mike Evans
Clark - Roy Woofter
Douglas - Howard McKibben
Elko - Mark C. Scott, Jr.
Esmeralda - Mario L. Ventura
Eureka - Charles Evans
Humboldt - William MacDonald
Lander - T. David Horton
Lincoln - Raymond Free
Lyon - Stanley Smart
Mineral - Charles Waterman
Nye - William P. Beko
Pershing - Roland W. Belanger
Storey - Virgil Bucchianeri
Washoe - Robert Rose
White Pine - Merlyn H. Hoyt

Nevada District Attorneys Association

Fallon, Nevada 89406

702-423-2226

2-59

Executive Committee

President — Mike Evans, Fallon
Vice President — Larry Hicks, Reno
Secretary — Stanley Smart, Yerington
Treasurer — Charles Thompson, Las Vegas
Historian — Merlyn H. Hoyt, Ely
Past President - William MacDonald, Winnemucca

To the Honorable Members of the Senate
Judiciary Committee:

The attached letter to the members of our State District Attorneys Association might help explain what has transpired concerning SB 349 since the hearing of last Wednesday. A copy is being forwarded to you in hopes it might clarify the situation.

Thanks for your courtesies in this matter.

Very truly yours,

Mike Evans

MIKE EVANS, President
District Attorneys Association

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Nevada District Attorneys Association

Fallon, Nevada 89406

702-423-2226

2-60

March 12, 1971

TO ALL MEMBERS OF THE NEVADA DISTRICT ATTORNEYS ASSOCIATION:

RE: SB 349 - APPEAL FROM PRETRIAL COURT ORDERS

I believe that the above-referenced legislation is of such importance to our Association that perhaps its present status should be brought to the attention of all prosecutors in the State.

The Bill was heard by the Senate Judiciary Committee last Wednesday, March 10. The majority of the committee members appear to favor the bill. Several questions arose, however, concerning the language used, i.e., giving the state or the criminal defendant the right to appeal "any pretrial order". I also discussed with the committee the possible effect of this legislation in reference to the recent Nevada Supreme Court cases concerning interlocutory appeals. A third question arose concerning the constitutional "speedy trial" problems that may be injected into a criminal prosecution if the defendant, after winning a pretrial motion, is then denied his right to a speedy trial by virtue of the state's appeal of the district court order.

Every effort was made, however, to impress the committee members with the importance of this bill to law enforcement in this state and the immense problems that will continue to arise without it.

Committee action on the bill was withheld on the mutually agreed suggestion that its contents should be discussed informally with the Supreme Court Justices. An informal conference with four members of the Supreme Court was held later the same day to discuss the bill, its possible constitutional aspects, and the effect it would have upon an already clogged appellate calendar.

Without being presumptious, I would like to review with you the present state of the law on this subject in order that you may understand the possible changes that will be made through this legislation.

You will recall that a former section of NRS, 177.065, authorized moot appeals by the state in order to seek "declarations of public interest and concern". The Nevada Supreme Court

entertained several such appeals until State vs Warmington, 81 Nev. 369 (1965) declared NRS 177.065 unconstitutional as an attempt to legislatively impose jurisdiction upon the Supreme Court was not authorized by the state constitution. Mainly as a result of this decision, the statute authorizing moot appeals was repealed in 1967 with the adoption of the new Nevada Criminal Procedure Law.

More recently our Supreme Court has also dealt very emphatically with the matter of interlocutory appeals. The principal case is Cook vs State, 85 Nev. 692 (1969) which involved a habeas application based upon the allegation that the defendant had been held for trial upon unconstitutionally admitted evidence. In that case, the Court made a very clear distinction between pretrial motions to suppress and habeas applications, holding that habeas would only lie if the application was based upon the insufficiency of the evidence upon which the defendant was held; that challenges to the admissability of evidence were properly the subject of pretrial motions to suppress and would not be entertained until final judgment.

The same reasoning was applied, unfortunately, in Franklin vs District Court, 85 Nev. 401 (1969) in which George Franklin attempted certiorari to review a district court ruling granting a rather wild pretrial defense motion for discovery. Our supreme court held that although the district court order was clearly improper, the matter was an interlocutory procedure and could not be entertained until after final judgment. In doing so, the Court apparently overlooked the fact that if the "final judgment" was an acquittal, then the State's appeal would be moot and thus barred by their holding in the Warmington case.

The dilemna caused by the situation referred to above is self-evident. However, we are faced with preparing remedial legislation that will overcome several continuing problems:

(1) If appeals from pretrial orders are authorized by the legislature without restriction in an attempt to overcome the Cook and Franklin cases, will the supreme court reject the statute outright?

(2) How can we secure this most needed interlocutory relief without flooding our Supreme Court with additional appeals, particularly since the statute would have to be reciprocal in granting both the state and the defense the right to appeal from pretrial orders?

(3) If the right to bring such a pretrial appeal was given absolutely and was accepted by the supreme court in spite of the Cook and Franklin rulings, would it not obviously involve opening the door to the equally serious problem of creating a delaying tactic by which the defendant could avoid being brought to trial?

(4) If the interlocutory appeal is brought by the state and the defendant's trial thus delayed, are we then open to an onslaught of habeas challenges for failing to afford speedy trial, particularly where the circumstances involve a defendant in custody in lieu of or without bail?

After the aforementioned conference with the Supreme Court Justices, I met with Senator John Foley and the Legislative Counsel Bureau in an attempt to redraft SB 349 in a manner that would overcome, at least partially, some of the problems set forth above. As you will note from the proposed draft which is enclosed herewith, our device was to make the matter of pretrial appeal a "good cause" situation, discretionary with the supreme court. We have also agreed to limit the subject matter of these appeals to pretrial motions to suppress evidence. If the new language works, it would involve filing notice of appeal directly with the Supreme Court Clerk within three days of the district court order. Presumably, the Supreme Court could then use its plenary powers to deal with each situation and to arrange an informal conference with counsel to determine the potential merits of the appeal. During this period while the court determines whether to grant review, it would of course have authority to issue orders staying the trial and, perhaps, also dealing with the question of the defendant held in custody.

I think that in actual practice, the majority of such interlocutory appeals accepted by the Supreme Court would be prosecution appeals since the court would probably consider the availability of other appellate relief available to the defendant after final judgment which would not usually be available to the prosecution.

We are working very hard on this particular legislation and can use any and all assistance or suggestions you may be able to offer. If this problem is as serious as everyone in our Association says it is, then I would expect many of you to forward your suggestions and comments to me and/or directly to members of the Senate Judiciary Committee.

Respectfully submitted,

Mike Evans

MIKE EVANS, President
Nevada District Attorneys Association

ME/b
enclosure

STATE PRIVILEGES OF ALIENS

21-30-00

2-63

Declaration of Intention to Become A Citizen

The vast majority of States in the Union have enacted legislation which prohibits an alien from engaging in some professions or occupations, or from exercising some privilege or benefit available under State laws, unless the alien has declared his intention to become a citizen of the United States.

A declaration of intention to become a citizen of the United States involves the execution and filing of a formal document in the office of the clerk of a naturalization court. It had its origin under an Act of Congress of January 29, 1795, as a prerequisite for naturalization, and endured as such until December 24, 1952, when the current Immigration and Nationality Act became effective. It is a sworn statement by the alien that it is his intention in good faith to become a citizen of the United States, to reside permanently therein, and that he will before being admitted to citizenship renounce all foreign allegiance and fidelity.

To qualify to make a declaration of intention, the alien must be at least 18 years of age and have been lawfully admitted to the United States for permanent residence. There

Submitted by U.S. Dept of Justice

is no prescribed period of time that an alien must have resided in the United States when he makes his declaration. When the declaration is made and filed with the clerk of court, the alien is required to pay the legal fee of $5.

The declaration of intention is issued in triplicate, the original being the court's copy, the duplicate copy for the Immigration and Naturalization Service, and the triplicate for the alien. The duplicate and triplicate bear the alien's photograph.

Under the naturalization laws in effect until 1952, a candidate for naturalization could not qualify for citizenship unless, before applying for naturalization, he had made a declaration of intention at least two years, but not more than seven years, before. The declaration of intention under such legislation was directly related to the naturalization process and was a mandatory statutory condition for admission to citizenship.

Under the current Immigration and Nationality Act, effective December 24, 1952, qualified aliens are still privileged to make a declaration of intention if they so

desire, but the making thereof is no longer a prerequisite for the filing of an application or petition for naturalization, nor a condition precedent to admission to citizenship. The provision in the current statute for the issuance of a declaration of intention was retained solely because of the provisions in the statutes of the various States requiring a declaration of intention to have been made before certain occupations or professions could be pursued or benefits obtained. Accordingly, the provision no longer has relevancy, nor is it material, to the naturalization process.

Under existing law, the fact that an alien has not made a declaration of intention does not render him less qualified for naturalization than an alien who has done so. Similarly, an alien who has made a declaration of intention is not any more qualified for naturalization than one who has not done so. The only significant fact that can be gleaned from a declaration of intention is the allegation therein that the declarant is a lawful permanent resident of the United States. However, that fact is readily available from another, and even more convenient, source--the alien himself, who is required by

law to be in possession of an Alien Registration Receipt Card, which shows the holder to have been admitted to the United States as an immigrant (permanent resident).

Under current naturalization procedures, more significant than the fact that an alien has made a declaration of intention to become a citizen would be the filing of an application to become a citizen. Such an application is, in fact and in law, a prerequisite to the institution of naturalization proceedings, is filed immediately before proceedings are instituted, and actually initiates formal action leading to naturalization. Even under prior laws which conditioned naturalization eligibility upon the making of a declaration of intention, a valid declaration could have been made at a time when the declarant had not yet qualified for naturalization. Moreover, the making of the declaration was no assurance that the declarant would apply for naturalization during the period of its maturity or that he would not change his mind after making the declaration of intention.

The elimination of the declaration of intention as a prerequisite for naturalization leaves the document without any meaningful significance as an indicator of whether the declarant will ultimately qualify or apply for naturalization.

For practical purposes the making thereof is an empty gesture undertaken solely to meet conditions imposed by State laws.

The retention of the requirement for making a declaration of intention under various provisions of State laws cannot serve any useful purpose, constitutes a wasteful and onerous burden for the declarant, the State governments, the Federal government and the courts, and should, therefore, be eliminated from all State statutes as a condition for obtaining a privilege or benefit thereunder.

Should safeguards against extending benefits under State laws to aliens who are not lawful residents, or to aliens who have not proceeded toward naturalization, be deemed necessary, they can be more effectively achieved through a requirement for presentation of an Alien Registration Receipt Card or proof that the alien has actually applied for naturalization.

The elimination of the requirement for the declaration of intention as a prerequisite for benefits under State laws would permit elimination from the Federal laws of the authority for the issuance of such documents.