

JUDICIARY COMMITTEE  
57th NEVADA ASSEMBLY SESSION

MINUTES

MARCH 20, 1973

The meeting was called to order by Mr. Bob Barengo, acting Chairman, at 3:45 PM.

MEMBERS PRESENT: MESSRS: BARENGO, HICKEY, GLOVER, TORVINEN, HUFF, CRADDOCK, FRY, LOWMAN, AND Ms. FOOTE.

MEMBERS ABSENT: NONE

GUESTS PRESENT: Lloyd Whalen, Chief Chemist for the State Narcotics Bureau; Attorney General Robert List; Deputy Attorney General W. Spinkel; Gloria Handley representing the children's services division of the Welfare Department; Marjorie Springmeyer, real estate broker;

Because the General Assembly adjourned late, many of those witnesses who were scheduled to testify were unable to stay.

Mr. Lloyd Whalen testified on A.B. 426 for the benefit of the Committee. Mr. Whalen told members that for the past eight to nine years he has been actively engaged in the analysis of all of the controlled substances in Northern Nevada. The difference between hashish and marijuana is that hash is a prepared substance from the plant cannabis as opposed to marijuana which is the plant itself. The tetrahydrocannabinol is an active ingredient in both hash and marijuana. The concentration in marijuana runs between 4 and 7% THC and in hashish the concentration runs up to 70% THC. Mr. Barengo asked if there is a place other than under marijuana where hash is covered in the controlled substances act. Mr. Whalen remarked that this is an interesting question since our law would come closest to covering this under 453.161 NRS, Sub-section 4, LETTER Q which would be the Tetrahydrocannabinol. Mr. Whalen stated that in his opinion it is not covered under the marijuana heading since it is not marijuana. "A.B. 426 is a very reasonable piece of legislation and it will have a large effect on the populace in general in those cases which are processed through my laboratory. Statistic wise in this year I have run 152 narcotics cases of that number 123 cases involved some quantity of marijuana. This is 81% of those cases which have been submitted. 97 Cases of the 123 involving marijuana have had less than one ounce. Of those 97, 77 have had marijuana only. Assuming these statistics are correct over half or 63% would be applicable under this law. "My own opinion, on a professional basis, is that this law is good for several reasons the first of which being that right now the first offense possession is either not prosecuted or dropped somewhere along the way." "If it is prosecuted and conviction occurs the individual involved is not spending any time incarcerated he is given probation. I am not advocating that the first offense be treated as a gross misdemeanor. I think that should be left to the discretion of the judges after conviction.

This does not seem to be a more lenient law, it would actually be more stringent in that it would get to more of the people involved.

Miss Foote asked if it is not correct that everything in this bill is the same as present law, and the only change is on Page 2, Line 10 deleting those words in brackets "is under 21 years of age and". Mr. Barenco said that this is correct, and that is the only change in present law.

Mr. Whalen said that if he would make any change in the bill at all it would be to clarify that the extract from the plant cannabis which is hash hish should not be included as a gross misdemeanor offense. It should be a Schedule I Controlled Substance and should be treated as such.

Mr. Huff commented on an article which stated that the extract could now be distilled to a liquid substance.

Mr. Whalen told the Committee that he had checked with Federal yesterday and nowhere had there been any clandestine Tetrahydrocannabinol through a laboratory other than the hash hish. This is the liquid to which Mr. Huff makes reference. Mr. Whalen said that last summer they had "busted" a THC liquid hash factories at Lake Tahoe. "It is a problem, but it is not covered in our law." "Since it is a concentration of the active ingredient of THC that would be the closest definition, and we should prosecute for hash under that section. Mr. Whalen further stated that he definitely feels that there is a physiological accumulative effect of tetrahydrocannabinol. "I feel that it is physically degrading in that you do lose some of those mental capacities with prolonged use of THC. Mr. Huff asked about the diabetic, and Mr. Whalen said that although this is outside the realm of his experience, the diabetic will have problems with any drug not prescribed. "I do not feel that this bill is any liberalization." At the present time the judges will not sentence to State Prison a person convicted of having one marihuana cigarette. Under this bill he would be more inclined to say "O.K. fella you can spend the next 7 or 10 or however many days incarcerated in the County Jail". Mr. Whalen told members of the Committee that if they would refer to NRS 453.096 which is the definition of marihuana, Section C says the resin extracted from any part of the plant- "I would strike that as being a definition of marihuana and say that is a definition of Tetrahydrocannabinol because Tetrahydrocannabinol is defined in the Controlled Substances Act, but it is not defined anywhere else. When you say a resin extract from Cannabis you are in fact defining hash hish, or liquid hash or whatever it is an extract in that it concentrates the tetrahydrocannabinol. "You should clarify it under the 453.096 definition of marihuana by striking C and incorporate it into this statute, whereby if you do have an extract of the plant you have a concentration of tetrahydrocannabinol that would be different from marihuana. Mr. Huff asked about the variation in concentrate. Mr. Whalen said that it depends on the individual plant. If it is a flowering tip off a cultivated female plant you may get as high as 10%, whereas if it is just a growing weed and not cultivated and male it may be below 0.5%.

Mr. Barenco informed the Committee that he had received a communication from Mrs. Ona Hibdon stating that after reading the bill and realizing exactly what it does she is in favor of A.B. 426. Mrs. Hibdon had been

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present earlier, but because of the delay in starting the meeting was unable to stay.

Attorney General Robert List addressed the Committee on A.B. 551. At the present time the statutory scheme governing the relationship between the Attorney General and the various District Attorneys is pretty much set forth in Chapter 228. Those powers are quite broad, they include for example the power to go before a Grand Jury, to issue subpoenas there, to execute indictments and presentments from a Grand Jury to a District Court, the power to prosecute a case in the District Court, and thereafter in the Supreme Court. That chapter also provides for the Attorney General to come in at any time in a criminal prosecution at the request of the local District Attorney when his County Commissioners concur and assist him in the prosecution of any cases. "As I am sure you know, there are two basic schemes to reach a conviction in a felony case, one is to go into a Grand Jury, present evidence, get an indictment, go from there into the District Court, proceed to trial and then if there is an appeal it would go to the Supreme Court. Under that method the Attorney General has full power to proceed from the beginning to the end. The other method is to start in a preliminary hearing, go from that to the District Court and if there is an appeal to the Supreme Court. In order to go into a preliminary hearing all that is required is a complaint signed by any citizen. The Attorney General has full power to go at that stage, he also has power to proceed in the District Court on request of the DA, and he has power in all criminal cases in appeals. The one missing link in this whole statutory scheme is in the power to file the one piece of paper known as an information which comes out of the preliminary hearing. This is the one aspect of the entire picture where the statute does not expressly say that the Attorney General may file a criminal information. There is an enabling provision in the Nevada Constitution saying that no criminal defendant may be convicted except where there is an indictment or criminal information filed by the DA or the Attorney General. What this bill does is to add at the top of Page 2 the words "attorney General or the District Attorney". I have discussed this with Washoe District Attorney Bob Rose and we feel that this is a provision that should be included. It would correct what we feel is a technical deficiency in the statutes. "This is not a one case bill."

Gloria Handley, Chief of Family Services, appeared to testify on A.B. 196. She said that purpose of this bill is to avoid the selling of babies in Nevada since on a nation wide basis the supply is much less than the demand. This bill is attempting to resolve the problem areas in the State adoption law. An amendment has been prepared to satisfy the objections of Mr. McCloskey of the Mineral Co. Independant. (see attached) The amendment changes Section 1. The amendment proposed provides for Judicial review prior to removal from a specific placement of a child. (see attached)

Mrs. Marjorie Springmeyer testified on A.B. 536. She questioned the Committee as to what is meant by qualified appraiser and submitted a list of questions to members. (see attached) She said that she felt that there is political and personal motivation in the selection of appraisers. Mr. Torvinen said that this is left to the decision of the Judges. Mrs. Springmeyer feels that there is a conflict of interest especially in the area of the Real Estate Broker. She is also concerned

WITH THE discrimination between the sexes. Mr. Torvinen informed her that if she felt that this is the case she should take her complaints to the Real Estate Board. Mrs. Springmeyer expressed concern regarding the appointments of appraisers and felt that certain qualifications should be set forth in the bill.

ACTION:

A.B. No. 110 SUMMARY-Obviates certain divorced parents' child support payments upon death.

Mr. Lowman explained that this bill is a result of a study made last term, and is a technical change to reflect the Supreme Court's decision.

Mr. Lowman moved to recommend DO PASS, Mr. Fry seconded.

Mr. Huff voted against this motion. Miss Foote, Mr. Glover, & Mr. Hickey were absent for the vote.

MOTION CARRIED DO PASS A.B. 110

Mr. Barengo announced that he would hold A.B. 196 until the Committee had a chance to review the proposed amendment.

A.B. No. 533 SUMMARY-Permits more than one humane society in a county.

Since the population has grown considerably since the law originally specified that there could only be one humane society in a county, it is in the interest of healthy competition to pass this legislation according to Mr. Craddock, primary author of the bill.

Mr. Craddock moved to recommend DO PASS, Mr. Torvinen seconded. Miss Foote, Mr. Glover, & Mr. Hickey were absent for the vote.

MOTION CARRIED DO PASS A.B. 110

Mr. Barengo announced that there will be no action on A.B. 551 since representatives from Las Vegas will be here to testify on Monday.

A.B. 536 SUMMARY-Reduces number of appraisers required in probate and guardianship proceedings.

Mr. Torvinen moved to recommend DO PASS, Mr. Fry seconded. Miss Foote, Mr. Glover, & Mr. Hickey were absent for the vote.

MOTION CARRIED DO PASS A.B. 536

Mr. Barengo told the Committee that he had received a telegram from the Rose De Lima Hospital in Henderson Nevada expressing the wish that a hearing be held in Southern Nevada on A.B. 319. Since it is so late in the session the feeling of the Committee is that this would not be feasible. Mr. Barengo requested the secretary to send a letter conveying regrets etc.

Mr. Fry distributed a letter from DeArmand Sharp, Chairman of the Uniform Commercial Code Revision Committee stating their position in favor of A.B. 453. There will be amendments and it was requested that the bill be held for action until Thursday, March 22.

A.B. No. 521 SUMMARY-Expands and clarifies definition relating to investment securities in Uniform Commercial Code.

Mr. Lowman moved to recommend DO PASS, Mr. Torvinen seconded. Miss Foote, Mr. Glover, and Mr. Hickey were absent for the vote.

MOTION CARRIED DO PASS A.B. 521

Mr. Barengo deferred action on A.B. 529 until one week from today, March 27.

A.B. No. 575 SUMMARY-Permits payment of certain of decedent's debts by executor or administrator without filing claim or prior court approval.

Mr. Lowman moved to recommend DO PASS, Mr. Huff seconded. Miss Foote, Mr. Glover, and Mr. Hickey were absent for the vote.

MOTION CARRIED DO PASS A.B. 575

The Chair declared the meeting adjourned.

November 16, 1972

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The Board of Governors  
State Bar of Nevada

Re: Uniform Commercial Code Revision  
Committee

Gentlemen:

The Uniform Commercial Code Committee has made a preliminary review of the final report of the Review Committee for Article 9 of the Uniform Commercial Code, covering proposed changes in Article 9 of the Uniform Commercial Code. By way of background, I should point out that the permanent editorial board of the Uniform Commercial Code was established in 1961 by agreement of the American Law Institute and the National Conference of Commissioners on Uniform State Laws, as a continuing agency to assist in attaining and maintaining uniformity in state statutes governing commercial transactions. By 1966, it became apparent to the Permanent Editorial Board that the time had arrived for a re-study in depth of Article 9 governing security transactions in view of the 337 non-uniform and non-official amendments made by 30 jurisdictions and in view of the fact that various lawyers and law teachers had written articles pointing out certain respects in which Article 9 might be improved.

Accordingly, Article 9 review committee was established to conduct a re-study in depth and report its findings to the Board. The final report of the review committee was approved by the Permanent Editorial Board in February of 1971. Thereafter, it was approved by the Conference of Commissioners on Uniform State Laws, who then became charged with the duty to urge its passage in every state so as to render the code's provisions as uniform as they may possibly be. Several states have adopted the amendments contained in the final report and bills adopting the final report are pending in many other states, including California.

It is the opinion of your committee that the changes in Article 9 of the Uniform Commercial Code with related changes in other articles, as set forth in the final report of the Review Committee, should be adopted

The Board of Governors  
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in Nevada, so that Nevada's code remains uniform and because the changes substantively are good ones.

If you approve our recommendation and agree the Article 9 amendments should be sponsored by the State Bar, we would be happy to assist Jim Brooke in getting the bill drafted, have it introduced and in any way we can in obtaining its passage.

Sincerely,

F. DeArmond Sharp, Chairman

FOR: UNIFORM COMMERCIAL CODE  
COMMITTEE

FDS:sm

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Section 1. Chapter 127 of NRS is hereby amended by adding thereto a new section which shall read as follows:

The agency to which a child has been ordered or relinquished for adoption shall be responsible for the care of the child, and shall be entitled to the custody and control of the child at all times until a petition for adoption has been granted. Any placement for temporary care pending adoptive placement made by the agency may be terminated at the discretion of the agency at any time. Any placement for adoption made by the agency may be terminated by the mutual consent of the prospective adoptive parents and the agency, <sup>or</sup> and when in the opinion of the agency the placement for adoption is detrimental to the interest of the child, by application to the district court for an order for removal from the home. In the event of the termination of any placement for temporary care or for adoption, the child shall be returned promptly to the physical custody of the agency.





*Marjorie J. Springmeyer*

LICENSED REAL ESTATE BROKER

NEVADA  
J LAZY J RANCH  
MOTTVILLE LANE  
GARDNERVILLE, NEV. 89410  
SUNSET 2-2593

March 15, 1973

MESSRS.

Tovinson, Hayes, Fry and Barengo  
Assembly of the State of Nevada  
Carson City, Nevada

Re: Assembly Bill no. 536 -  
Reduces number of appraisers required in  
probate and guardianship proceedings.

Gentlemen:

I am very interested in the above bill and every facet concerning the probate laws in this country.

Could you please answer some of the questions regarding this new proposed amendment?

1. What are the qualifications of a "qualified appraiser"? Is he or she a licensed Real Estate Broker within the State of Nevada?
2. Does he or she have to have a degree designating they have passed a test equal to a M.A.I. degree?
3. Does the State of Nevada have any test administered by the Department of Commerce for a "qualified appraiser"?
4. What will you build in to the law regarding "conflict of interest" regarding the one appraiser? Would a Judge in a County lean toward appointing a friend, or one that has been in County Government?
5. Will a County Clerk (as so often in Douglas County) be considered a "qualified appraiser" -- or the County Assessor?
6. Would the compensation be fixed by a percentage of the estate?
7. Could the testator or testatrix of/<sup>a</sup>will, nominate their own qualified appraiser -- for instance his accountant?
8. Would a male appraiser be considered over a female appraiser with the same qualifications?
9. I note in the last Nevada State Bar Journal an article regarding a case in Idaho - Reef vs Reed that the probate court shall not discriminate against women in preference to men regarding being appointed as administrators in probate proceedings, and what would be the status of women "qualified appraisers" in a probate or guardianship hearing?



Marjorie J. Springmeyer

CALIFORNIA  
P. O. BOX 650  
SOUTH LAKE TAHOE  
BIJOU, CALIF. 95705

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LICENSED REAL ESTATE BROKER

2- AB No. 536

10. Do you think it a good idea to license "qualified appraisers" within the State of Nevada with a course of study and restrictions the same as the Real Estate Brokers - or all professional people so to speak?
11. If the above were carried out, would not the Internal Revenue Service, be in a position to not question an appraisal regarding a Federal Estate Tax?
12. If the "qualified appraiser" came up with a different figure than the County Assessor regarding land value, which by law is to be taxed at 35% of its fair market value, what position would that leave the County Assessor in?
13. The attorney and executor fees in an estate are based on the value of an estate -----do you think this a fair law, or do you think attorney and executor's fees should be based on an hourly base?
14. The Justice Department has filed anti-trust suits against accountants, real estate brokers and other professionals for price-fixing, but to date have not filed against lawyers. In your proposed bill, "For the purpose of making the appraisement, the court or judge shall appoint "a disinterested qualified appraiser, who is entitled to reasonable compensation for his services, to be allowed by the court"-----what is the basis for compensation for "qualified appraisers" who are not licensed as such by the State of Nevada?

Thank you for any clarification you might give me on the above questions.

Sincerely yours,

*Marjorie J. Springmeyer*  
Marjorie J. Springmeyer

CC: Lawrence Jacobsen

## First Judicial District Court

Lyon, Churchill, Storey  
Ormsby and Douglas Counties  
State of Nevada

Minden, Nevada 89423

IN CHAMBERS  
RICHARD L. WATERS, JR.  
DISTRICT JUDGE  
PHONE 782-2096

March 19, 1973

Assemblyman Robert R. Barengo  
Nevada State Legislature  
Carson City, Nevada 89701

Dear Assemblyman Barengo:

Thank you for your letter of March 12th concerning the narcotic bill. I think that this bill, A.B. 426, will certainly be of help in these small possession cases. It at least gives us a choice in what would perhaps be what I call amateur cases. There are so many of them that come up before me who almost have a social problem rather than a criminal problem. I think you heard me pop off on that subject, so I think that this bill would be an admirable thing.

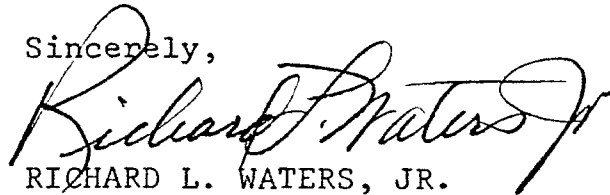
I wrote a letter to the assemblymen and senators from the counties in my district, and asked them for some help in dividing the First Judicial District into two districts. This has been done already by rule, in that each department of the district is a separate operating entity. Judge Gregory has two counties, and I have three. I am enclosing a copy of the letter that I sent to one of the senators.

Joe Dini wrote me back and said that he talked to Assemblyman Hayes, Chairman of the Judiciary Committee, and Hayes said that he would take care of the matter by attaching the suggestions that I made to the Assembly Bill which deals with the Third District. I saw in the paper today that you had taken over for Assemblyman Hayes because of his illness, and would appreciate it very much if you could follow up on this, either with Joe Dini or with the other members of the Judiciary Committee. As you know, a Judge has to run in each county of his district, and at present I am taking care of three counties, and have to run in five, so it's a very practical matter, at least so far as Judge Gregory and I are concerned.

To get back to the subject of narcotics, I don't know what your feelings were while you were in the District Attorney's office in Reno, but I'm sure you observed some-

thing of what I was talking about the other day. That is the concentration by the Department of Narcotics and Dangerous Drugs on small social affairs, and social use of marijuana, rather than concentrating on the professional pusher, or the user who is almost a professional pusher. I have at least thirty probation reports in my files that would indicate that what I was saying the other day is the absolute truth, and you or anyone else in the legislature is certainly free to inspect those reports. Again, thank you very much.

Sincerely,



RICHARD L. WATERS, JR.  
District Judge

RLW/mj  
Enclosure

AGENDA FOR COMMITTEE ON JUDICIARY

Date MARCH 20, 1973 Time 1:30 PM Room 240

<u>Bills or Resolutions to be considered</u>	<u>Subject</u>	<u>Counsel requested*</u>
A.B. 110	SUMMARY-Obviates certain divorced parents' child support payments upon death.	
A.B. 196	SUMMARY-Improves administrative and judicial procedure in adoption proceedings.	
A.B. 533	SUMMARY-Permits more than one humane society in a county.	
A.B. 536	SUMMARY-Reduces number of appraisers required in probate and guardianship proceedings.	
A.B. 551	SUMMARY-Expands powers of attorney general.	