SENATE JUDICIARY COMMITTEE

MINUTES OF MEETING HELD

8th DAY OF MARCH, 1973

The meeting was called to order at 9:35 a.m. Senator Close in the Chair.

PRESENT: Senator Close
Senator Foley
Senator Wilson
Senator Bryan
Senator Dodge
Senator Hecht

Mr. Myron Leavitt, Clark County Commissioner
Mr. Chuck Thompson, Clark County Assistant District Attorney
Mr. Bob Broadbent, Clark County Commissioner
Attorney General Robert List
Mr. Robert Rose, Washoe County District Attorney

EXCUSED: Senator Swobe

S.B. 182 - Increases number of justices of peace in certain townships.

Mr. Myron Leavitt testified that the Board of County Commissioners discussed the matter of a third Justice of the Peace for Clark County in a meeting and passed a resolution unanimously that Clark County not be given a third JP. They have just recently completed their new court rooms for the four district judges given to them last session. They estimate that a third JP would cost between $120,000 and $140,000 for the next fiscal year.

He felt that the problem of cases being bottlenecked in the courts could be solved in a more economical manner. The Commissioners will adjust the salaries of the North Las Vegas and Henderson Justices of Peace to $1,000 a month and those two justices would be willing to handle any additional workload in preliminary hearings and arraignments.

However, if the legislature does create a third JP, the Commissioners have asked that it be effective in January of 1975 so that the person be elected at the general election and the county has time to plan and build another courtroom.

Senator Wilson asked Mr. Leavitt if he felt it would be more appropriate to pass enabling legislation which would allow the county Commissioners to appoint an additional judge within the next two years if necessary, and mandating the Commissioners to provide for the additional judge by 1975. Mr. Leavitt replied that he would

prefer that the additional justice, if approved by the legislature, be elected rather than appointed. He also reminded the Committee that it would add a tremendous impact on the county budget because they would also have to pay for the cost of the court, the sheriffs, the court reporter, court clerk, the district attorney and public defender.

Mr. Chuck Thompson testified that Clark County's calendar is fairly current now but there has been trouble in the past year because the Justices of the Peace were setting their calendars unreasonably. Since the grand jury has been convened, they are somewhat current.

There has been a fantastic increase in caseloads, the District Attorney's Office has processed over 3,000 felonies in one year. Even with the grand jury convened, there will be an ultimate need for an additional Justice of the Peace. This, of course, will mean additional money because they would then need more staff in both the District Attorney's and Public Defender's Offices.

If we continue to have a grand jury system in Clark County, which is not an automatic procedure, we could wait until 1975 to get an additional Justice of the Peace. If there is no grand jury after the present one is dismissed, which will be very shortly, we could not wait until 1975.

Mr. Bob Broadbent felt that if the legislature would approve the additional Justice of the Peace, he would rather see it be enabling legislation rather than mandatory. He felt the additional JP is not necessary at the present time, and enabling legislation would permit the appointment by election and give them a chance to work on the financial aspects.

S.B. 244 - Provides for random selection of grand jurors by county clerk of jury commissioner.

Mr. Myron Leavitt spoke not for a majority view of the county commissioners, but from his own personal opinions and reactions. He is very reluctant to change the present system and felt that whenever a random selection system is used, no matter what method is used, there would still be problems.

In regard to the Attorney'General's suggestion of taking the issue out of politics by allowing selection by district judges, Mr. Leavitt stated that some district judges are more political than the county commissioners. No matter who will do the selecting, there will be problems with who they may select. The present grand jury has done a good job, and yet has received a lot of unfavorable publicity they should not have received.

A random system, whether completely random or random with discretion, would take a long time to empanel because people are not willing to give up one day a week or more for an entire year unless they are public spirited people. Unless these people are actually willing to devote their time, they should not be made to do so.

Mr. Bob Broadbent said that he would support S.B. 244. I think you could empanel enough people who are available to serve.

I don't think any of the commissioners mind picking grand jurors and doing the best they can, but I know that I pick people who tend to reflect my feelings and the feelings of my constituency. That is only human nature, but I'm not sure if it's random selection. Members of grand juries are labeled according to those who appoint them and sometimes those appointed find it hard to make an impartial decision which would relate to the commissioner who appointed them.

It is possible to select a random grand jury and empanel 100 people and give the judge the authority to relieve those who would not want to get involved. The federal system is a random selection system and those people travel long distances.

Senator Bryan asked Mr. Broadbent's opinion regarding the investigatory grand jury and if a random selected panel would have the expertise to properly investigate civil matters. Mr. Broadbent replied that it depends on how good the leaders are in the grand jury. The answer to this might be in the direction given the grand jury by the prosecutor or whoever is lending expertise to the grand jury. Senator Dodge suggested that would amount to an executive officer of the government dominating the grand jury. Mr. Leavitt agreed that an overzealous prosecutor can make a grand jury his policital tool, and stated that many public servants were ruined by overzealous prosecutors who hinted at wrong-doing without indicting.

Senator Wilson felt that the proposition that citizens of a community can not or will not function impartially and perform their constitutional duties because of peer pressures, and therefore, should be a state function, is a question that has to be faced squarely and honestly.

Attorney General Bob List - I don't feel that there would be a mechanical problem in getting people who would be willing to serve and reiterate that our study has shown that only 9 States have a system like ours. All the rest of the States except two seem to be able to find a way to weed out people who are willing to serve and those who are not. To say a judge or court could not find people willing to serve and the county commissioners could does not make sense.

Grand juries can not investigate the judiciary but can investigate county government, and county commissioners are responsible for the conduct of the county. Persons who commit abuses are public officials who are many times appointed by the commissioners. I recognize that there is a problem of how far a grand jury can go in constructive suggestions to correct abuses with no indictments.

Mr. Chuck Thompson - A problem that is more obvious than real has been pointed out, and that is, a good reason for removing the selection from the county commissioners is that whatever the grand jury does will take away from the commissioners and will reflect on them. The District Attorney's office is taking a position of continuing the blueribbon concept appointed by a judge. We don't feel a random selection system would work.

S.B. 262 - Provides for electronic interception of communications.

Attorney General List - Nevada's present wiretap law was enacted prior to two supreme court decisions which said that statutory schemes for wiretapping do not provide adequate safeguards for the public and to insure privacy. The federal government passed a new law based on electronic wiretaps which incorporated those decisions and required the States to conform. Nevada's law is in need of review since it does not provide for the supreme court decisions or the federal guidelines for States to institute wiretapping. This bill would comply.

Under the federal wiretap statutes it is necessary to have State wiretap laws before wiretap orders can be obtained, even by State agencies.

In the original draft of the bill, we had initially provided that law enforcement could seek a court order to obtain evidence concerning any commission of a felony. However, at our state-wide law enforcement meeting on March 1st this was discussed at length and decided that this provision was simply too broad. We have, therefore, enumerated certain offenses in which wiretaps could be sought. They are murder, kidnapping, robbery, extortion, bribery and violations of Chapter 453 and 454 which constitute the Controlled Substances and Dangerous Drug Acts. There is one additional area which might be covered and that is the bombing of property, facilities or structures which would effect the public health and safety.

This bill provides in Section 11 that a district attorney or the Attorney General apply to the district court judge in the county for the wiretap to take place. The present law provides that orders can be obtained from a district court judge or supreme court judge. This bill should be amended to include supreme court judges in line with the federal system so that if a lower court judge refused the order, a judge at the higher level may issue it.

Another minor amendment should be made on Page 6 Line 19 where it provides that the judge who issues or denies the order originally is the only person who may destroy such order. This does not allow for a situation of a change in the court, either by death or retirement. Therefore, it should be amended to read "judge or court who issued or denied the order."

Page 7, line 33 provides for an appeal from the supreme court. Since we have included the supreme court in the first instance if the order is refused by the lower court, this section may be deleted.

Section 26, Page 8, line 33, is the existing law which permits the monitoring or recording of conversations where one party to the conversation consents. This is consistent with the federal law in Title 18, Section 2511 subsection 2d which provides for single party consent outside the necessity of a court order.

Senator Wilson suggested making the violation of a wiretap statute without a court order a felony rather than a gross misdemeanor as provided in Section 28. He then asked what the policy decision is for allowing a tap without a court order when one party consents and the other party is unaware of the tap. There was further discussion about the relationship of an eye-to-eye conversation being taped and the person using a telephone and relying on a confidential relationship. Senator Wilson felt that the legislature should not extend the invasion of privacy without a requirement for a court order.

Mr. List continued with the explanation of amendments for this bill. Section 29, Line 39, would remove the necessity to transmit a wiretap order or copy thereof to the Public Service Commission which the present Nevada law requires. This must be removed because it is violative of the federal act which absolutely prohibits disclosure to outside parties.

Nevada Law Enforcement sees this law as an honest and legitimate means of accomplishing the ends with which law enforcement is charged. Wiretap orders are not available except where no other means of obtaining evidence is available. This must be established by sworn testimony before a court can grant such an order. This bill does provide protections, and in instances where the specific offenses mentioned are involved, the public interest dictates where no other means is available, that wire tap be utilized and authorized. It is the policy of every State in the Union and federal government to allow wiretapping in those instances. I urge that S.B. 262 be adopted with the suggested amendments and S.B. 260 and S.B. 28 be defeated.

Senator Chic Hecht - S.B. 260 was introduced for three primary reasons: (1) I do not think a district court judge should be able to allow wiretapping; (2) I do not think committing a felony or conspiracy to committ a felony is deserving of wiretapping; (3) private investigators and others use wiretapping to break up marriages, and this kind of abuse should be a felony.

To say that we would follow the federal law is not entirely correct. The federal law is enforced by the FBI and other federal agents who have devoted their entire lives to this function and are very well trained. A U.S. attorney must make an affadavit to the U.S. Attorney General and get written permission from a federal judge, who is appointed for life. The basic thrust of wiretapping in the federal system is for organized crime and narcotics.

In the State law, you allow a political apointee, the district attorney or Attorney General, who runs every four years, going to a district judge, who also runs for office and is sometimes politically motivated. We do not have the safeguards that the federal system has built in.

A letter received from Judge Carl Christensen (attached to these minutes) states "I sincerely believe wiretapping to be a serious invasion of privacy. It might be a good police method, but the abuse could cause more harm that its use."

I originally introduced S.B. 260 because I felt it is up to the law enforcement people to justify the need for wiretapping and then the legislature could determine which crimes wiretapping should apply to. The Attorney General has since revised his bill with the consensus of other law enforcement officials throughout the State to cover specific offenses. I strongly object to the inclusion of bribery since, as an elected official, bribery always hangs overhead and it is very difficult to define what constitutes a bribe. This inclusion could result in wiretapping being used for political purposes and I don't think bribery constitutes a crime where wiretapping should be used.

Mr. Bob Rose - I am here to speak on behalf of S.B. 262 with the changes suggested by Attorney General List.

I disagree with Senator Hecht in the area of exclusion of the crime of bribery. I think this is the most serious of offenses. When a man who holds public trust and is elected by the people, violates that trust that is essential to government, I consider him to be doing more damage than a burgular. Bribery is a very serious crime that threatens the establishment of government.

Senator Bryan asked Mr. Rose if he felt that wiretapping by law enforcement would be expanded if this bill (S.B. 262) were passed. Mr. Rose replied that S.B. 262 restricts the ability to place wiretaps rather than broadens it.

Chairman Close excused the witnesses and thanked them for their testimony.

S.B. 206 - Provides for appointment of additional deputy clerks of Supreme Court.

The Committee approved the amendments previously discussed on this bill.

Senator Dodge moved to re-refer to the Committee on Finance with a recommendation of amend and "Do Pass".

The meeting was adjourned at 11:00 a.m.

Respectfully submitted,

Eileen Wynkoop

Eileen Wynkoop
Secretary

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APPROVED:

Melvin D. Close, Jr.
Chairman

Attachment

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EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY
LAS VEGAS, NEVADA 89101

CARL J. CHRISTENSEN
DISTRICT JUDGE

DEPARTMENT SEVEN

February 20, 1973

Hon. Chic Hecht
State Senator
Capitol Building
Carson City, Nevada

Dear Chic:

Recently I read in the newspaper about Senate Bill 260, introduced by you relating to wire-tapping.

I know one man's opinion doesn't make a national survey, but I sincerely believe wire-tapping to be a serious invasion of privacy. In the alternative, it seems to be a good police method; however,my fears are that its abuse could very well cause more harm than its use.

Very truly yours,

Carl J. Christensen

CARL J. CHRISTENSEN
District Judge

CJC:bg

States with laws relating to privileged communications for counselors.

South Dakota
Idaho
Montana
Indiana (first one)
Michigan
North Dakota
Iowa
Nebraska
North Carolina
Delaware
Hawaii (master contract)
Maryland (drug-related only)
Oregon (all certified school personnel in regard to civil suits)

States with laws pending relating to privileged communications for counselors.

Hawaii (see above)
Florida
Kentucky
Maine
New Jersey
New York
Wisconsin (has law for school psychologists)
Utah

States researching laws relating to privileged communications for counselors.

Colorado
Illinois
Washington
Georgia
Minnesota
Ohio
Texas
Alaska
Arkansas
Massachusetts