SENATE JUDICIARY COMMITTEE

MINUTES OF MEETING HELD

11th DAY OF APRIL, 1973

The meeting was called to order at 8:10 a.m. Senator Close in the Chair.

PRESENT:

Senator Foley
Senator Bryan
Senator Dodge
Senator Hecht
Senator Swobe
Senator Wilson

Justice Gunderson, Supreme Court
Robert Rose, Washoe County District Attorney
Charles Garner, Clark County District Attorney's Office
Assemblyman Bob Barengo
Assemblyman Alan Glover
Stanley Gortikov, President, Recording Industry of America
Merle Snider, President, Reno Musicians Union
Mike Werner, American Federation of Musicians
Carolyn Martines, Adoption Specialist, Welfare Division
Robert Holland, Deputy Attorney General - Welfare
William LaBadie, Deputy Administrator, Welfare Division
Kathy Wall, District Attorney's Office

A.B. 416 - Eliminates interlocutory appeals in criminal cases.

Justice Gunderson testified that this legislation, which is proposed by a number of district attorneys and the District Attorneys' Association, is directed toward counter-acting a measure passed at the request of the District Attorneys' Association last session.

Last session it was the feeling of the District Attorneys' Association that they desired to be able to appeal from interlocutory rulings on motions to suppress evidence. That bill had a good purpose, although the framing of the bill might not have been as artful as it should have been to accomplish the purpose. Because the framing was not artful, the members of the supreme court did express doubts about this legislation. The problems which resulted from the bill were primarily two-fold.

The greatest problem was that in enacting the bill there was no

provision made for requiring a person who desired to appeal to make a coherent showing to the supreme court in an intelligible form so that they could evaluate whether it should be appealed at the interlocutory stage or whether matters relating to suppression of evidence should be deferred until after final judgment. There were no provisions for getting the necessary information that the court would need to make a determination: whether the defendant was in custody, whether a really substantial question was presented.

As a result of this legislation, the District Attorneys have had a number of appeals filed against them, but they have not availed themselves of the statute. The supreme court has entertained only two appeals. The statute proved to be an annoyance, but it was not a great source of delay because there were only two appeals entertained. In one case the supreme court ruled in favor of the suppression of evidence, so the statute had the effect of preventing a needless trial. In the other case there was no ruling because the district attorney involved asked the court to withhold ruling. Other attempted appeals were declined by the supreme court.

In this bill, the portion of the statute that was enacted at the last session is Subsection 2 on the first page. This is the provision which the District Attorneys' Association feels is causing the trouble. However, in their attempt to go back to the old practice, they are requesting to take out more than was put in last session. They would remove the provisions for an appeal from an order of the district court granting a motion to dismiss, a motion for acquittal, a motion in arrest of judgment or granting or refusing a new trial.

With that language deleted, after a trial that the state has won and a motion for a new trial is moot, the state would not be in a position to appeal from the order granting the new trial. The state should not be put in that position.

Mr. Gunderson stated that the members of the court do not object to going back to the old practice, but suggested that before doing that it might be well to consider cleaning up the statute by conforming it to the nature of the federal statute. The federal statute gives the government the right to appeal and a procedure to follow when critical evidence has been suppressed. If the committee decides to leave the defendant with the right to appeal, then the statute should be cleaned up so that the defendant who seeks to appeal, or if the state seeks to appeal, they should be required to make as part of their initial presentation an explicit showing of certain facts requisite to the appraisal of whether to allow the appeal.

Senator Wilson stated that the court has the authority to establish this procedure by regulation. Justice Gunderson replied that it could be made a workable procedure by regulation, but whether or not it would be better to do it that way rather than by repeal and make it applicable only to the state is a value judgment the court has no attitude on. He personally felt that cleaning up the statute by rule or amendment is something that needs to be explored since the state is getting knocked out of cases by loss of evidence. Without exploring the clean up of the statute, it is not very forward looking to go back to what was the law previously, which was an objectionable law at the time.

Bob Rose testified that the request of the District Attorneys' Association two years ago was that they wanted the right to appeal in cases of suppression of evidence because at that point the case was usually final for the D.A. They wanted to suspend the defendant's right to suppress until after final judgment when the case is final against him. The legislature wanted to make the right to appeal equal, so this bill permitted both parties to appeal. The defendant also has the right to appeal after a jury verdict so the defendant gets two bites out of the apple.

The Clark County District Attorney has used its appeal authority once, Washoe County has used it twice. There have been 30 cases of these appeals used by defendants. The District Attorneys are willing to give up their rights to appeal and work on a better solution during the next two years.

Mr. Charles Garner of the Clark County District Attorney's Office testified in favor of this bill. His basic philosophy is against any intermediate appeals. In Clark County on a writ of habeus corpus from a murder case they may have 15 or 20 separate hearings; one case for every piece of evidence.

Assemblyman Barengo testified that those lawyers who have not recently practiced criminal law would not realize how much of a problem this provision has created due to the legislature expanding the appeal rights to the defendant.

Senator Wilson stated that if the problem in Clark County was because of excessive motions to suppress, the district judge might need a statutory declaration disallowing excessive hearings in the first place. Justice Gunderson stated that in 2 years he did not know of any case in which there have been repetitive requiests for appeals filed and there have never been repetitive appeals on motions to suppress granted.

Senators Bryan, Foley and Wilson objected to the fact that the supreme court was vested with the rule making authority to affirmatively regulate the hearing of these motions and they have not been willing to entertain these responsibilities.

A.B. 487 - Limits availability and scope of post-conviction relief.

Justice Gunderson testified that he had not discussed this bill with the court. He stated that most of the petitions for post-conviction relief that were coming to the court have been framed in terms of attacks of constitutional dimensions anyway. He didn't know how much the bill would limit attacks of constitutional dimensions.

Bob Rose testified that defendants have a right to appeal after a trial, and in addition to that appeal, they are using habeus corpus and post-conviction relief to get additional appeals. They are using habeus corpus and dropping over to post-conviction relief with the same motion. The defendants are using these appeals on habeus corpus and post-conviction relief to reargue the whole trial.

The bill would tighten up the grounds for filing a writ of post-conviction relief by having them filed on matters of law without arguments of a hearing. This would put post-conviction relief back into its proper prospective by not permitting evidentiary matters. Constitutional grounds on any points can not be raised.

Senator Bryan expressed his concern that the reason this appeal was developed was because the federal court was being bombarded with petitions and there was no remedy on the state level. The post-conviction relief would keep the criminal process within the state court system in Nevada rather than going to the federal system. He asked Mr. Rose if the adoption of this bill would put Nevada back into a position of having no remedy under the state court system. Mr. Rose replied that this bill would not remove post-conviction relief, but merely limit its areas.

Kathy Wall of the District Attorney's Office remarked further that the revision of this act is an attempt to limit the one prodeeding that can be limited to cut down on repetitive and excessive writs.

A.B. 808 - Limits right to petition for writ of habeus corpus in certain cases while criminal action is pending.

Justice Gunderson testified that this bill resulted from discussions between the court and the legislators concerning the delays in

habeus corpus proceedings and the solution to those delays. Members of the supreme court believe those delays result from the lapse of time in transmitting, docketing and preparation of briefs. Pending formal enactment, the supreme court implemented a new procedure through informal agreements with the district attorneys and public defenders. Since that time the prosecutors have all responded favorably to the proposal, except Mr. Woofter from Clark County, who favored another proposal which the court did not favor.

The proposal which was enacted is contained in the bill. It endeavors to make it express that repetitive writs will not be allowed nor will writs or petitions for writs brought after a plea in such proximity to the trial that it would delay the trial. This was included in the bill even though it is not a new provision in the law because the Washoe County District Attorney was complaining that judges are allowing repetitive writs.

The provisions of sections 3 and 4 cut down to 15 days the time for filing notice of appeal. That is felt to be plenty of time to file notice in a case of this kind.

The real problem that is attempted to be solved in subsection 5 is that after habeus corpus writs are heard in district court, it takes a lot of time for the record to get docketed and to get briefs of substantial pages dealing with what was said to the lower courts. These get dragged out over the course of months while each party accords the other party an extension of time to file those briefs.

With this bill we would hope to say to the litigants -- "get your briefs in properly to the lower court, let the lower court have the opportunity to look at it and we will look at the very same material you submitted to the lower court and rule on that basis using that as the record on appeal." This would eliminate the problem of the time lag and, as Mr. Buckles mentioned to Justice Gunderson in a letter, would improve the quality of the arguments presented to the district courts. If the supreme court wanted further briefs, they have the authority to order further briefs.

Bob Rose testified that the Washoe County District Attorney's Office is in favor of this bill.

Senator Dodge moved "DO PASS." Motion seconded by Senator Foley. Motion carried.

A.B. 406 - Prohibits unauthorized reproduction, manufacture, distribution, or sale of recorded material.

Assemblyman Glover testified that this bill would solve a real problem to the industry by stopping those persons who are cheating

the legitimate recording industry. It is a model act which every state on the West Coast and in the West will eventually have.

Mr. Stanley Gortikov testified that "piracy" is defined as the unauthorized duplication of sound recordings, including tapes and tape cartridges. One out of every 4 cartridges sold are estimated to be unauthorized, and $200 million is estimated to be diverted away from legitimate channels. He brought with him 6 tape cartridges which he presented to the committee. All cartridges were of the same artist and contained hit tunes recorded by the artist. All but one of the cartridges were pirated. In the case of the 5 cartridges which were pirated, no artist or musicians were paid and the musicians trust fund and recording industry were not paid.

Record companies make their profits from relatively few hit artists and records. Pirates put out only hits. It is easy to imagine the impact these pirated tapes make on artists and record companies.

Senator Wilson asked Mr. Gortikov if anything had been done civilly? Mr. Gortikov replied that the civil remedy is a poor one since it is tough to find the pirates. They have no address on the cartridges and if there is an address listed it is usually a post office box that is non-existent.

Senator Hecht asked if copyrights are paid in these circumstances. Mr. Gortikov replied that anyone can record a tune which has been released if he pays the composer $.02 per tune. Many of these pirates attempt to pay the $.02 per tune in token amounts -- such as $.78 or $1.38 but this fee has nothing to do with the artists.

These pirated tapes not only hurt artists, musicians and record companies, they also hurt legitimate wholesalers and retailers. When these retailers do not handle pirated products, they loose money two ways because not only does their competition have the same tapes at half the price, but they can average out their savings on pirated tapes and sell legitimate tapes at lower prices. Legitimate tapes retail at around $5.00, pirated tapes retail around $2.00.

The consumers are cheated also. The quality of pirated tapes are below the commercial versions. No taxes are paid on these pirated tapes. Nevada, which characterizes itself as an entertainment capital, is a hot-bed of piracy. It is fostering something which is extremely damaging to entertainers. This bill is directed at those people who are seeking to live off an industry and profit off somebody else's creativity without paying a cent.

Mr. Charles Garner testified in opposition to this bill not as a member of the District Attorney's Office, but as a private attorney representing people in the retail record business in Clark County. Mr. Garner presented a series of letters from retailers in Clark County opposing the bill. Those letters are included in these minutes as Attachment A.

He stated that it is a question of whether the young people who want to buy these tapes have to pay $2.00 or $8.00, and whether Nevada will be the first state to enact this type of legislation.

This bill seeks to put undue burdens on the retailers. Retailers basically have no objections to paying royalties and do attempt to pay them.

This bill would make it a felony for a person campaigning to tape a speech on a channel and transfer it to three different tapes. It would also require that each time a master be copied, they would have to have the corporate officers of a recording company approve that recording.

Senator Wilson asked Mr. Garner what the legislature should do to protect the industry, not so much from product imitation which would be singing the same song, but from duplication of an artist doing a song which would not be covered under plagiarism. Mr. Garner mentioned the federal copyright laws. Senator Bryan then asked him if the fact that copyright fees are not being paid is a legitimate problem. Mr. Garner replied that retailers are attempting to pay the copyright fees. Senator Dodge then mentioned that there was a problem of piracy of tapes prior to the application of federal legislation on copyrights. Mr. Garner stated he did not know whether that was true.

Merle Snider, President of the Reno Musicians Union and Chairman of the Arts Council related to the committee what happens when these monies are not paid for pirated tapes. Every time a legitimate record is sold, a certain amount of that money goes to the Music Performance Trust Fund and a residual fund to musicians who performed. Out of the trust fund monies, $55,000 comes back to Nevada in the form of free music to the people in this state.

Mr. Mike Werner testified that his job is to police the recording industry throughout the United States and Canada. He stated that the recording companies must sign an agreement book in order to use union musicians. When they use union people they pay $90 for a three hour session. Recording companies invest $25,000 to $100,000 to make a single recording, which may never be sold on the market if it is not a good tune. Recording companies pay $.01 for every record sold in the United States which goes into a special

trust fund; one half of that fund goes to the Music Performance Trust Fund and the other half to the special fund used to pay royalties to the artist. Bootlegged recording companies do not pay anything into the trust fund or to the artist. Last year musicians lost $10 million due to bootlegged recordings.

Senator Bryan moved "DO PASS." Motion seconded by Senator Hecht.

Yeas - 5
Nays - None
Not Voting - Foley (1)
Absent - Dodge (1)

Senator Foley stated that he did not wish to participate in the vote because a person who has been his client for 10 or 15 years was being represented by Mr. Garner.

Motion carried.

A.B. 109 - Exempts the Investigation and Narcotics Division from the requirements of the Administrative Procedure Act.

Senator Dodge moved to indefinitely postpone action on this bill. Motion seconded by Senator Foley. Motion carried.

A.B. 196 - Improves administrative and judicial procedure in adoption proceedings.

Mrs. Martines, Mr. Holland and Mr. LaBadie discussed the amendments which they proposed to help them get to the prospective consenting or relinquishing parent early enough to advise them of the services available through the agency. After much discussion it was decided to amend the bill back to the language in the first reprint on lines 7-9 on page 2 but limited to consent executed in the state of Nevada.

The meeting was adjourned at 10:30 a.m.

Respectfully submitted,

Eileen Wynkoop
Secretary

APPROVED:

Melvin D. Close, Jr.
Chairman

LOLLIPOP
1233 EAST SAHARA
Las Vegas, Nevada

April 9, 1973

Mr. Mel Close, Jr., Chairman
Senate Judiciary Committee
Carson City, Nevada 89701

Dear Sir:

Please be advised that the undersigned wishes to go on record that A.B. 406 has not been wisely drawn and that there should be much more Legislative investigation into this area before a bill is enacted.

Please be advised that the undersigned believes that this legislation singles out one industry and allows others to do the same thing, such as the garment industry, pictures, works of art, etc.

Legislation of this type has been enacted in less than eight states and none of the states has enacted legislation that is as broad or detailed as in A.B. 406. This act would virtually wipe out any of the recording services relative to sound for educational or entertainment purposes, and also it would place impossible burdens upon sellers of tapes, making it necessary to ascertain the owners of the various masters before they would be able to sell a tape even though they were buying from bona fide warehouses.

A.B. 406 raises the price of all sound recording tapes by as much as 250% to 300%, and would prevent the free play of competition. It would make for monopolistic practices and there would be no limit upon which a "hot" record might bring.

The act is too broad, and since there is absolutely no way to prove ownership of master tapes unless a corporate officer of M.G.M. or associate of a similar company is subpoenaed, it would make prosecution extremely difficult and expensive.

Mr. Mel Close, Jr., Chairman
Senate Judiciary Committee

April 9, 1973
Page Two

It is the belief of the undersigned that the custom tape industry as it now exists allows for recordings of good quality to be sold to the public at reasonable prices.

We feel that the custom tape is not unfair competition and is not an inferior product.

Very truly yours,

LOLLIPOP

By Warren D. Gaddis

mbh

SIGHT AND SOUND
811 West Owens
Las Vegas, Nevada

April 9, 1973

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Senate Judiciary Committee
Carson City, Nevada 89701

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SIGHT AND SOUND

By Ruby Barton

mbh

GENERAL FREIGHT OUTLET
2216 East Charleston
Las Vegas, Nevada

April 9, 1973

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Senate Judiciary Committee
Carson City, Nevada 89701

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We feel that the custom tape is not unfair competition and is not an inferior product.

Very truly yours,

GENERAL FREIGHT OUTLET

By _____

mbh

SOUND FACTORY
1549 East Charleston
Las Vegas, Nevada

April 9, 1973

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Senate Judiciary Committee
Carson City, Nevada 89701

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April 9, 1973
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Very truly yours,

SOUND FACTORY

By Gerald R. Tisdall

mbh

PICK A TUNE
2039 Civic Center
North Las Vegas, Nevada

April 9, 1973

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Senate Judiciary Committee
Carson City, Nevada 89701

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Very truly yours,

PICK A TUNE

By Ann Roberts

mbh

THE RECORD PLANT
2321 Eastern Avenue
Las Vegas, Nevada

April 9, 1973

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Senate Judiciary Committee
Carson City, Nevada 89701

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THE RECORD PLANT

By Jerry Bongiorno
Vice President

mbh