ASSEMBLY JUDICIARY COMMITTEE
58th NEVADA ASSEMBLY SESSION

MINUTES

May 7, 1975

This meeting was called to order by Mr. Barengo at 8:10 a.m. on Wednesday, May 7, 1975.

MEMBERS PRESENT: BARENGO, BANNER, HAYES, HEANEY, HICKEY, LOWMAN, POLISH and WAGNER.

MEMBERS EXCUSED: SENA.

A Guest Register from this meeting is attached hereto.

S.B.519 was first considered, and Clark Guild, attorney for Union Pacific Railroad, said that they asked for this legislation. The purpose of the bill is to have documents considered to have been received as shown by the postmark date on the envelope. Taxes paid by the Railroad, and sometimes other items mailed, are the primary reason for this request. By looking at the postmark, you would be able to tell if they were timely filed if the postmark is not past the due date. This bill is similar to other statutes enacted in most of the western states where Union Pacific Railroad operates. This legislation in these other states was passed just during the past few years. This would also conform to some of the federal statutes wherein a person's tax return is deemed to be timely filed if the postmark is before the deadline. Mr. Guild was questioned by this Committee.

Fran Breen, Nevada Bankers Association, testified on S.B.369. He referred to Paragraph 3, Page 2--the last sentence regarding repossession. He read this to the Committee. They feel that this is a particularly bad part of the bill. "Commercially reasonable" is not in the Uniform Code, but only 3 or 4 cases have come along which said what "commercially reasonable" meant. There is some ambiguity in that sentence as to what cash price is being referred to--whether it is when the dealer purchases the vehicle--or when the dealer sells it. He would like that paragraph taken out, or at least amended.

Senator Joe Neal testified on S.B.369. It would allow a person to get some of his money back if he had his automobile repossessed. If the car or vehicle is now repossessed, he does not receive anything--no matter what price is received for the vehicle after it is repossessed. Since our country is going into high unemployment, the people cannot afford to keep their vehicles. If the person has paid it off except for just a few hundred dollars, he could possibly recover some portion. Senator Neal said "commercially reasonable" is defined in the bill starting on Line 7. The Committee questioned the Senator.

Daryl Capurro, Nevada Motor Transport Association of Nevada and Franchised Auto Dealers Association, testified on S.B.369. When this bill was originally introduced it was radically different than it is now. They are not in opposition to this bill as it stands now, but they were very opposed at first. He pointed out the penalty section which Mr. Breen spoke about. They support the proposed changes recommended by Mr. Breen. In the new car business, this would have a substantial effect where there was no willful intent. The dealers indicate that this bill is not much different than what they are doing now. They are dealing in the wholesale market now as regards repossession. They have a wholesale value and are generally wholesaled into the general market. The original bill and the amended form of the bill was intended to get at the problem where a vehicle comes in with a value of $3,000- and the repossessor sells it, in turn, to a friend for $2,500-. He said it is not very often that there is a surplus left. In many cases, even when the dealer has extablished a wholesale price, several dealers attempt to sell it outside the wholesale market, because it reduces their losses and it prevents them from having to be taken into court for a deficiency judgment.

Phil Hannifin, Gaming Control Board, appeared to testify on A.J.R.33 and A.J.R.34, the lottery bills. Chairman Barengo said he was here today to answer questions which had previously been raised.

As to A.J.R.33, Mr. Hannifin said his remarks are his personal remarks, in as much as the Gaming Control Board has not reached a position on these bills yet. They are not entirely familiar with the lottery concept. He quoted from a 1919 case located in 43 Nev. 243. This deals with lotteries. The gaming affects only a few or small areas of the community, but a lottery affects every household in the community. A lottery has a stimulating effect towards the lower income population. This type of bill may be an overstimulation to the best kind of community.

As to A.J.R.34, Mr. Hannifin said that this sets out to amend the provision in our constitution. It would provide that lotteries would be prohibited and the sale of tickets for them be prohibited, except for charitable purposes. Mr. Hannifin pointed out that lotteries are not legal, but various raffles, bingo games, etc. are. He said charitable institutions can be allowed with the consent of the Gaming Control Board no more than once each quarter of a year. He would suggest a change of language. The language presently in this bill "lotteries should be conducted by and on behalf of" should be removed, because it leaves the door wide open for many businesses to take over the control of these lotteries for the charatible institutions. He suggests taking out "on behalf of".

Mr. Hannifin's suggestions are that A.J.R.33 should not be acted upon at this time without further study, and A.J.R.34 poses no great evils if it is passed now, but it should be confined to

exclude just anyone from getting involved on behalf of a charitable institution.

Next, Robert Petroni and Robert Cox, each counsel for Clark Co. School District and Washoe Co. School District respectively, testified on A.B.728 and S.B.525. Mr. Petroni said that they appeared when there was a discussion on S.B.525, which deals with procedures for suspension or expulsion procedures from school.

As to A.B.728, Mr. Petroni said that it did not have enough guidelines in dealing with these procedures. The United States Supreme Court in Goss v. Lopez (this was a 5 to 4 decision) said that when suspending a student from school for 10 days, a due process hearing must be had. This could be an informal hearing. The Supreme Court said that it was not ruling on anything which would involve a suspension of more than 10 days. The Washoe and Clark County School Districts thought something should be put together to protect the students should this situation occur. They submitted to the Senate Judiciary a copy of an amendment to S.B.525. The Senate was concerned about having more guidelines that what was set out in A.B.728. Section 1 of the proposed amendment deals with the due process. This bill should have the requirement that due process requirements be met. Also, it should allow school districts to meet future decisions as they are handed down by the Supreme Court.

Mr. Petroni said that they are working with Senator Wilson on the senate bill. He questioned Senator Wilson on A.B.728. He had no objections to passage of the bill containing revisions as are contained in the revised S.B.525. After questioning from Mrs. Hayes, Mr. Petroni gave the Committee an idea of which school personnel would conduct the various hearings and the general procedure of those hearings.

Mr. Cox testified next, and he presented this Committee with a copy of Disciplinary Procedures for Students in the Washoe County School District. The procedures which they adopted deal with more serious suspensions. He feels Clark County will adopt this type of procedure, too. Mr. Petroni commented that they had some 2,000 short term suspensions. They gave the students a letter to take home to the parents requiring a parental conference. They have had no suspension over 10 days, except for the expulsions. They had only two expulsions last year. Even on expulsion they do not prohibit the student from coming back to night school or in another educational program to finish his education. Mr. Hickey questioned the various Clark County procedures for different situations. Mr. Cox added that the record the child has made for himself in the school situation is used for school purposes, but they are destroyed after the students gets out of school. The more serious situations involve the police, and they keep the record. The teacher usually gets into the act by referring the student to the administrator.

AB 728 Exhibit

Mr. Cox said that the word "hearing" is a misnomer because it is not a hearing in the true sense of the word. This is the word the Supreme Court used. Washoe Co. has applied the due process to interscholastic activities as well. The Committee questioned Mr. Petroni and Mr. Cox at length. Attached to these Minutes are the exhibits presented to the Committee.

Stan Warren, representing Nevada Bell, spoke on S.B.520, saying that he testified in the Senate on the bill and they put a minor amendment on the bill. The bill as rewritten in its present state is acceptable, and they have no objection to its passage.

Richard Siegel, ACLU, testified on A.B.771. He wants to testify in favor of grand jury reforms. He feels that this bill is very important for the citizens of this state. This would supervise government officials, as we have seen in the grand jury proceedings involving Sparks City officials. An indictment can be tantamount to the end of a political career--even if the accused is acquitted. Dr. Siegel feels the bill could go further in the expansion of rights. Witnesses should be advised of their rights. They would not like to see someone brought before a grand jury with the understanding that it would provide him with immunity when, in fact, it does not. This Committee questioned Dr. Siegel.

Assemblyman Heaney testified on A.B.771. He passed out copies of an article which summarizes certain of the problems which have surfaced with respect to the grand jury. This is attached to these Minutes. He feels that the grand jury serves a very important function, but he is not sure in this day and age if it is doing the job it was intended to do. He feels the abuses are great. The 4 things contained in this bill were designed to act as safeguards for anyone involved with a grand jury. The limitation in the bill for calling a person to appear before the grand jury is set at two times for one particular matter. He feels that this would prevent harassment of the person. If they really need to call a person back, they must show to the court why, in detail, this is necessary. Page 1, Lines 3 through 10 refers to the Miranda decision. Mr. Heaney elaborated on this provision, which provides for the attorney to accompany the witness while he is being questioned by the grand jury. Presently there are a couple bills which were introduced in Congress, one of which addresses some of the problems which A.B.771 does. These Congressional bills, of course, encompass a great deal more than what A.B.771 covers. The Committee questioned Mr. Heaney.

Cal Dunlap, Deputy District Attorney, Washoe County, testified on A.B.771, as well as Michael Fondi, Carson City District Attorney, who was here on behalf of the Nevada District Attorneys Association. He is quite concerned that a bill of this type was introduced this late in the session without necessary notice to the police and law enforcement agencies. He would strongly oppose this bill in all its aspects. He appreciated receiving Mr. Heaney's call yesterday advising him that this bill would be heard, but due to the lateness

of the hour, the necessary and concerned people are not here to testify today.

Mr. Dunlap proceeded to testify that Larry Hicks, Washoe County District Attorney, was appalled at this type of bill and its sweeping magnitude. Mr. Dunlap proceeded to review the bill thoroughly for the Committee. The police officers and the prosecutors opposed the giving of the Miranda warnings. However, the quality of law enforcement has improved since the decision came about. He has a great deal of experience with the grand jury. He finds it is a most difficult job for him, and in fact, it is the most difficult job a prosecutor may have. He is also concerned about the presence of the attorney with a witness in front of the grand jury. He feels Section 1 is totally unncessary. They are talking about people who may be defendants, and the District Attorney always "plays it safe" and warns them of their rights. He said the language in Section 2 is unduly broad. He opposes the whole concept of challenging all jurors. Also, discharge of a juror for "any cause" is very broad. The grand jury proceeding is not a trial, and neither is it a preliminary examination. Section 3 regarding a motion to dismiss is a bad provision. The language "any other cause" is very broad. As regards Section 4, there is a remedy for a person for harassment. Before taking action on a bill such as this, Mr. Dunlap recommended to this Committee that they very thoroughly study the grand jury system.

Marshall Bouvier, Reno attorney, testified on A.B.771, saying that he testified on numerous occasions before the federal grand jury. He related some of the details of the grand jury inquiry as to the performance of some of the Sparks City officials, as he was the attorney in the matter. He related specifics, such as the number of times each witness was called in regard to one incident, the hours each was kept waiting before he could testify, if he did, indeed, testify, the lateness of the hours, and his feelings on the Miranda warnings. He feels the attorney should be allowed to be with his client during questioning so he could give accurate advice if it is needed.

Las Vegas Justice of the Peace, Mahlon Brown, testified on A.B.699. He would like to address his remarks as from the justices of the peace in the larger counties. He requested this bill and authored it. He explained the bill and how it was set up. He said the case load is great and the need for new judges is also great. He gave statistics of case loads. He would like to have the district court rules apply to the justice court. This bill sets up provisions where the courts would be accountable to the Supreme Court. He would like a court reporter to transcribe all proceedings in the justice courts. If this was done, they could eliminate 6 people who do the docketing. It could be done by one, and the 5 others could be used in microfilming. They want to make a more efficient court. Judge Brown went over the bill section by section, and related his own personal experiences in his court room so as to give the Committee an idea why the bill was necessary. He was questioned thoroughly by the Committee.

As to A.B.756, Judge Brown was requested to comment on this by some of the rural judges. Apparently, some of the rural judges do sit on Saturday. This bill could not apply in Las Vegas, and he is not sure about Reno, until more judges are given to Las Vegas. However, he feels that this may be a good bill. He believes that what is proposed in Section 2 of this bill is also included in his bill, A.B.699.

Judge Brown said he spoke with Chief Justice Gunderson, and he said he felt that A.B.699 would sole some of the problems.

Assemblyman Daniel Demers and Assemblyman James Schofield testified on A.B.773. This bill came about from an accident which happened last week in Clark Co. involving two young boys who rode a motorcycle into an old mine entrance and went into the shaft and fell into a hole or chamber inside the entrance. They both were killed. This bill provides that all entrances for any mining operation be covered. They feel that the Inspector of Mines should be consulted on this and that someone should be able to determine which types of mines are the ones which would be covered under the provisions of the bill. They feel that if a man digs a hole in the ground out of greed or for financial gain, that his responsibility should be to see that these dangerous situations are remedied. They ask that the Inspector of Mines under the Nevada Industrial Commission Mine Safety Division be inserted in the bill and that they be charged with the responsibility of checking these situations out. They also request that the Inspector and the NIC promulgate rules and regulations for this situation. They were questioned by this Committee.

There being no further business before this Committe at this time, Chairman Barengo adjourned the meeting after an appropriate motion and second.

ASSEMBLY JUDICIARY COMMITTEE

GUEST REGISTER

DATE: May 7th, 1975

NAME	BILL NO.	SPEAKING	REPRESENTING
F E DuBois	AB 773	X	Inspector of Mines
Betty Koefod	AB 773		N.D.C.
Fred Bacon	SB 369	✓	Nevada Bankers Assoc
Michael Fondi	AB 771	✓	Nevada D.A. Assoc
GINO DEL CARLO	SB 369	No	Nev. Bankers Assoc.
CLARK J. Guild, Jr.	SB 519	Yes	U Pac. R.R.
Richard Siegel	AB 771	✓	ACLU
Bill Hamilton	AJR 33 & 34	✓	Gaming Control
CAL DUNLAP	AB. 771	✓	WASHOE COUNTY D.A.'s ASSN.
Robert Petroni	AB 728	✓	Clark County Schools
Bob Coy	AB 728	✓	Washoe County School District
MARSHALL A. BOUVIER	AB 771		Self.
Patrick B. Walsh	AB 496	✓	Atty Gen's Off.
B. MAHLON BROWN	AB 699 & 756	✓	CLARK COUNTY / JUSTICE CT
D Flemers	AB 773		Assembly #1
Dan Byhum			Las Vegas Review Journal
Glen Griffith	SJR 21	✓	Fish & Game
Sen. Joe Neal	SB 369		
Daryl E. Capurro	SB 369	✓	Nevada Franchised Auto Dealers Assoc.
Stan Warren	SB. 520	✓	Nevada Bell

AB 728

NRS 392.030 is hereby amended to read as follows:

Sec. 1. The Board of Trustees of a school district may authorize the suspension or expulsion of any pupil from any public school within the school district. All suspensions and expulsions shall conform to the requirements of sections 2 and 3 of this Act and the Board of Trustees of a school shall adopt rules and procedures for such suspensions and expulsions which comply with due process requirements.

Sec. 2 Except as provided in section 3, before any pupil may be suspended or expelled from a public school, the pupil shall receive notice of the charges against him, an explanation of the evidence and an opportunity for a due process hearing before a hearing officer whose decision shall be final.

Sec. 3. Pupils whose presence pose a continuing danger to persons or property or an ongoing threat of disrupting the academic process may be immediately removed from school provided that in such cases the requirements of section 2 follow as soon as practicable.

AB728

Administrative Regulation _____ 972

DISCIPLINARY PROCEDURES FOR STUDENTS IN THE WASHOE COUNTY SCHOOL DISTRICT

Section 1

The imposition of serious discipline upon any student, including but not limited to, suspension from interscholastic activities, suspension from school, transfer and expulsion, shall be governed by the provisions of this Regulation.

Section 2

The principal of each school or the administrator assigned to the general administration of this Regulation (hereafter referred to as administrator) shall have the power to initiate proceedings to suspend, transfer or expel any student. If,upon receiving a complaint of possible student misconduct, the administrator believes the matter is a potential disciplinary one, he shall fully investigate the facts. Wherever possible, facts shall be obtained from those who directly observed them, and the student shall be given notice of the charges against him and an explanation of the evidence against him. He shall then be given the opportunity to fully explain his side of the story. The administrator may hold a post-investigation conference with the student and his parents.

Section 3

If, after full investigation, discussion, and attempted resolution of a complaint against a student, the administrator finds:

(a) That there is evidence that the student has actually committed the conduct charged; and

(b) That the matter cannot be handled through discussion or counselling; and

(c) That the conduct warrants suspension from school or an interscholastic activity for more than ten (10) school days, transfer or expulsion,

he may initiate the hearing procedure, as provided below, to suspend, transfer or expel any student.

In the event that the administrator finds that the conditions described in (a) and (b) of this Section exist, but that the conduct warrants a lesser discipline than described in (c), such lesser discipline may be imposed without the necessity of a further hearing.

The administrator shall make every effort to resolve potential disciplinary matters through discussion and counselling.

Section 4

Prior to the suspension from school or an interscholastic activity for more than ten (10) days, transfer, or expulsion of any student, the student shall be accorded a due process hearing, except as provided in Section 9 or 10. The hearing shall be before an impartial panel which shall consist of three employees of the Washoe County School District designated by the Superintendent, one of whom shall be appointed Chairperson.

The administrator shall be the charging party, and the Chairperson shall convene the hearing panel. Neither the administrator nor the student shall discuss the merits of the case with any member of the hearing panel prior or subsequent to the hearing.

Section 5

The administrator shall furnish the student written notice of the hearing sufficiently in advance to allow him adequate time to prepare his defense. The notice shall contain the following:

(a) The time and place of the hearing;

(b) A statement of the specific facts alleged against the student, the school rule(s), policy(ies) or regulation(s) allegedly violated, and the proposed discipline;

(c) The student's right to be represented by an advocate of his choosing (including counsel);

(d) The student's right to present evidence, call witnesses, and cross-examine adverse witnesses; and

(e) A copy of the regulation containing the disciplinary procedures for students.

Section 6

All hearings shall be conducted as follows:

(a) It shall be private, unless the student requests that it be public;

(b) No evidence shall be offered against a student unless prior to the hearing the student is allowed to inspect written evidence and is informed of the names of witnesses against him and the substance of their testimony;

(c) All parties shall have the right to present evidence, call witnesses, cross-examine adverse witnesses, and submit rebuttal evidence. All testimony shall be given under oath;

(d) The student shall have the right to be represented by an advocate of his choice (including counsel);

(e) The student shall have the right to confront any witnesses against him;

(f) The hearing panel shall not be required to observe the same rules of evidence observed by the courts, but evidence may be admitted and given probative effect only if it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs. The scope of the hearing shall be confined to the charges contained in the notice required by Section 5.

(g) Either party may request that a tape recording be made of the hearing at the cost of the Washoe County School District. The student charged, on request, and at his own expense, subsequently may have or, under supervision, make a copy of such recording.

(h) The hearing panel shall issue a written decision stating its findings of fact and the evidence upon which the findings are based. Findings shall be based solely on relevant evidence presented at the hearing.

Section 7

No decision that disciplinary action is warranted shall be made unless the hearing panel first finds, upon the basis of clear and convincing evidence:

(a) That the student has, in fact, committed the conduct charged;

(b) That the student's conduct violated a school rule policy or regulation;

(c) That the student had reasonable notice that his conduct was prohibited by a school rule, policy or regulation.

If the panel so finds against the student, it shall, by majority vote, take such disciplinary action as it may deem appropriate; provided, however, that such action shall not be more severe than that recommended by the administrator. The decision of the panel shall be final.

Section 8

In the event that disciplinary action is not found warranted by the hearing panel, all notations relating thereto shall be completely removed from all school records. Students shall have the right to inspect their school records to ensure that such matters are removed, and also so that they will have reasonable opportunity to bring to the attention of school authorities and to rebut or correct any mistaken or incorrect information or notation thereon.

Section 9

The administrator may take emergency action, including temporary suspension, after making a finding, that:

(a) The student's conduct presents a clear threat to the physical safety of others, or to the property interests of others, or is so extremely disruptive as

to make the student's temporary removal necessary to preserve the right of other students to pursue an education; and

(b) It is impossible to hold the hearing described in Section 6 because of the emergency nature of the situation.

The administrator shall do everything feasible to assure that the temporary action is based upon a clear factual situation warranting it, including questioning the student and the complaining party if possible.

A temporary suspension or removal shall last no longer than necessary to avoid the dangers described in (a) of this section, and in such cases the administrator shall initiate the procedures set forth in Sections 2 - 7 as soon as practicable.

Section 10

Any student may waive the procedures established in this Regulation by knowingly and willingly signing a written waiver which waiver shall likewise be signed by his parent or guardian if he is under 18 years of age.

NEVADA STATE JOURNAL
JANUARY 10, 1975

Grand Juries Fail To Do Job—Critics

WASHINGTON (UPI) — A grand jury, says Melvin Belli, the noted San Francisco criminal lawyer, is "like a bad wife. A guy hates to live alone, but he doesn't want to live with a bad wife."

Long regarded as a citizen's bulwark against malicious federal prosecution, the grand jury is under attack in the legal community, Congress and civil liberties groups as failing to fill this role.

Its critics say the grand jury, rather than protecting a citizen, is used to harass and intimidate dissidents without the constitutional safeguards enjoyed by defendants in criminal trials.

"We have to have something like the grand jury, but the present system has been abused to death," Belli said in an interview. "District attorneys use it as a tool for what they want. If the grand jury were more independent, I think it would be more useful."

The federal grand jury, an institution with roots in English common law, usually consists of 23 citizens selected from voter registration rolls who meet secretly to hear government evidence.

Grand jurors can make their own investigations and present charges, but most often they are asked simply to decide whether a prosecutor has sufficient evidence to warrant a trial and if so, to return an indictment listing charges.

The problem was pinpointed by Melvin P. Antell, a New Jersey supreme court justice, in an American Bar Association article.

"Though free to take part in the interrogation, the grand jurors must place enormous trust in the prosecutor's guidance. It is he, after all, who tells them what the charge is, who selects the facts for them to hear, who shapes the tone and feel of the entire case. It is the prosecutor alone who has the technical training to understand the legal principles upon which the prosecution rests..."

Rutgers law professor Helene E. Schwartz says the grand jury has never lived up to its reputation as a next year studying the grand jury system, and Rep. Joshua Eilberg, D-Pa., plans to hold hearings in early 1975 on two measures he has introduced to modify use of grand juries.

Eilberg has proposed a constitutional amendment that would abolish the federal grand jury almost entirely, except for special grand juries formed expressly by Congress to investigate such broad criminal categories as organized crime, narcotics traffic or major political scandals. And the grand jury would be able to select its own attorney, independent of the Justice Department.

In other cases the amendment would have the prosecutor present an "information" or charge, instead of a grand jury indictment, before a judge. A defendant could go straight into court with his lawyer and have the counts quickly dismissed if they obviously were without merit.

Under the grand jury system, a potential defendant can be called many times to testify in secret proceedings. He does not have the benefit of a lawyer in the jury room, cannot control selection of the jurors, runs the risk of incriminating himself and may not even know he is the actual target of the inquiry.

The bill also would:

—Require that a witness who wants an attorney with him in the grand jury room must have one. A lawyer would be appointed if the witness could not afford one.

—Allow a witness to seek to quash a grand jury subpoena if it would create a substantial hardship on his family because of the distance he must travel.

—Amend immunity rules to free a witness from any prosecution based on what he says. Existing rules allow the government to prosecute if it obtains the same evidence independently of a witness' testimony. Some lawyers say the immunity rules, though upheld by the Supreme Court, are subject to abuse.

protector of the innocent. With few exceptions, Schwartz says, federal grand juries have been used to bring charges against those opposed to official policy.

As an example of the potential for abuse, Schwartz cites the controversial trial of the "Chicago Eight" on charges of conspiring to disrupt the 1968 Democratic National Convention.

Charges against Black Panther leader Bobby Seale, one of the eight, were so flimsy they were dropped in mid-trial. Asked why Seale was indicted in the first place, Jerris Leonard, then head of the Justice Department's civil rights division, was quoted as saying: "The Black Panthers are a bunch of hoodlums. We've got to get them."

The American Bar Association has named a subcommittee to spend the

—Reduce the maximum prison term for a recalcitrant witness from 18 to six months, and disallow another jail term if he again refuses to testify in another grand jury proceeding about the same matter.

—Make it a crime for anyone other than the witness or his lawyer to disclose any matter before the grand jury, a provision intended to curb "leaks" of secret testimony often traceable to the prosecutor.

The Justice Department adamantly opposes most of Eilberg's proposed reforms.

The department concedes the grand jury no longer offers much protection for citizens against political prosecutions, but insists the system generally is not abused and can serve as an important investigative tool because of its subpoena powers.