SENATE JUDICIARY COMMITTEE

MINUTES OF MEETING

MAY 2, 1975

The meeting was called to order at 8:15 a.m. Senator Close was in the Chair.

PRESENT: Senator Close
Senator Wilson
Senator Bryan
Senator Dodge
Senator Foote
Senator Sheerin

ABSENT: Senator Hilbrecht - Excused

SB 573 Expands definition of "peace officer" to include bailiffs of district courts and deputy constables.

Senator Jack Schofield and Will Duiss, Las Vegas Metropolitan Police Department, appeared before the Committee. They said these people are serving subpoenas and making arrests and therefore should come under the peace officer status in order to avoid any problem that might occur with whether or not they have the power to arrest.

Senator Bryan moved a "do pass as amended",
Seconded by Senator Sheerin,
Motion carried unanimously. Senators Wilson and Hilbrecht were absent from the vote.

SB 574 Increases witnesses' fees in civil and criminal litigation.

Will Duiss testified that the fees should be increased to at least $20.00 per day or more. He said many people are reluctant to testify because they can't afford to leave their jobs to do it and many times policemen have to go to court on their days off to testify for 4 or 5 hours for $10.00 and he felt it was unjust.

Senator Foote moved to "indefinitely postpone",
Seconded by Senator Dodge,
Motion carried unanimously. Senators Wilson and Hilbrecht were absent from the vote.

SB 173 Enacts the Nevada Antitrust Act.

Don Klassic, Attorney General's Office, presented amendments recommended by the Committee at a previous meeting.

The amendments were quite substantial and there was not enough time to discuss them at this meeting so the Committee agreed to amend and do pass with the provision that they will review the amendments before final processing.

SB 173 Senator Dodge moved a "do pass as amended"(after review), Seconded by Senator Foote,
Motion carried unanimously. Senators Wilson and Hilbrecht were absent from the vote.

AB 38 Makes certain changes in administration of decedents' estates.

T. A. Niquill, Nevada Bankers Association, testified that after reviewing this bill his committee felt the fees as proposed were greater on the small estates and much less on the larger estates. They recommended that the fees not be changed but remain as they presently are.

Virgil Getto, Assemblyman, stated that he served on the committee to study the probate code and their main concern was the areas of complaint from citizenry: 1) the time it took to settle estates and 2) the cost of settling estates. He said they considered the Uniform Probate Code but decided that amending the present Nevada Probate Code was the best route. He discussed with the Committee the improvements he felt AB 38 would provide.

Don Perry, State Chairman of Joint Legislative Committee representing the American Association of Retired Persons and the Nevada State Retired Teachers Association, appeared before the Committee. He stated that his group felt the subcommittee appointed to study the probate problems completely subverted the intents and purposes of the resolutions passed in the Senate and Assembly in 1973, and in their opinion AB 38 was a special interest bill which did nothing for the people of the State of Nevada. Mr. Perry introduced Mr. John Carruth from Winnemucca as a speaker for the State Committee.

John Carruth read a speech (copy attached) which asked that there be substituted for the AB 38 proposal, the provision that a citizens study panel be created, perhaps appointed by the governor, so constituted as to faithfully represent the whole population of the State; that this panel be invested with the power of subpoena; that it be adequately funded; that it make its studies between this legislative session and the next and then present a report of its findings and recommendations to the next session of the legislature.

AB 38 George Folsom, Co-Chairman, Probate Trust Committee, State Bar of Nevada, testified that the principal thrust of the study was to speed up administration of estates and provide a more satisfactory practice with respect to fees. He felt that the provision for 6 months for administration of an estate under $60,000 is an improvement and creates a procedure whereby the person responsible for administering the estate has to settle it within 6 months, if there is no federal estate tax involved, or appear in court. He said his committee made a comparative analysis of the Uniform Probate Code and the Nevada Probate Code and found the Nevada code was better.

Keith Ashworth, Assemblyman and Chairman of the Study Committee, testified that they spent a great deal of time studying the Uniform Probate Code and during this consideration they learned that the Nevada Code as it exists was better and so decided to improve on it. The primary concern of the committee was to shorten the time for probate and that was done by saying that an estate must be settled within 6 months after appointing an administrator or executor, if there were no federal taxes involved, or the administrator or executor must go to court report why it is not closed. Another major problem was to try to cut the cost and this was improved by raising the amount for summary administration to $60,000 which would lessen the fees and require the estate to close earlier. They held meetings in Reno, Las Vegas and Carson City and gave adequate notice to the public. Mr. Ashworth said that another two-year study as requested by Mr. Perry and Mr. Carruth would only delay some of the good that would result with this bill. He agreed that there is more that can be done and would encourage any group who wished to study this but felt the Committee should move forward with this bill.

The Committee discussed the merits of the bill with the witnesses and said they would consider this testimony and schedule this bill again to recommend amendments.

There was no further action taken at this time.

There being no further business, the meeting was adjourned.

Respectfully submitted,

K M Berry

Katherine Berry, Secretary

APPROVED:

Mel Close Jr.

Senator Close, Chairman

As urgently as reform is needed in the area of probate procedures and regulations, it is clear that, up to this point, no attention is being given the subject in Nevada. AB 38, before its introduction, was trumpeted as being the long-awaited probate reform which was promised by the Legislative Commission's subcommittee hearings on the subject of probate problems. Only a little more than a casual reading of the original AB 38 is needed to learn that it held nothing for the people. And with more careful study, it seemed clear that its emptiness did not occur thru oversight.

AB 38 cannot be considered separately from the way in which it came about, nor separately from the way in which it has been presented. With the fanfare accompanying the extravagant announcements of what this bill would do for the people, and then we are presented with a proposal which contains many words, but we find that over 41% of its lineage deals only with the giving of notices in probate procedures - whether a notice is to be published, posted, mailed, or handed to the addressee - our expectancy turns to disappointment. For some time, every TV news period included quotations stating that AB 38 would reduce the time required for most probate cases to 6 months, and substantially shorten the remaining cases; that summary administration would be raised from $8,000 to $60,000; that setting aside without administration would be raised from $5,000 to $10,000; that citizens involved in the probate procedure would be given a new right, to negotiate fees with the lawyers - and all this news had an affirmative sound, a human-interest kind of sound. But then we had to learn that, of these principal selling points, one of them was simply not based on fact; some of them might be true, depending on whether a judge felt that it would be a good idea, and one of them could only be regarded as a crude attempt to mislead the people.

As for shortening probate time to 6 months, what they are talking about, of course, is the language in AB 38 which states that a report from the executor is expected in 6 months, where no federal estate tax return is required. This provision has to be regarded as someone's private joke, for 2 reasons: First, it doesn't even have any enforcement clause. All the language in this section discusses what happens when the executor <u>does</u> make this 6-month report; it doesn't even mention that anything might

happen if the executor doesn't bother to make any report. Second, even if there were any way to require that this 6-month report be made, what have we gained? In the present probate code - the one now in effect - a report is required from the executor in 5 months and 17 days.

At point after point in this proposal, we find that the actual content of AB 38 is the exact opposite of what is claimed for it, or the opposite of what was promised to us. We are told how it shortens the probate procedure, but we can turn the pages and point to provision after provision where the time periods are made longer, instead of shorter; I cannot now identify one instance in which some time interval was actually made shorter. We are told, with great emphasis, how this bill would reduce probate costs; but at virtually every point where it deals with costs to the public, they are increased. Exceptions are certain clerk's filing fees and executor's fees for estates over $646,000. The advance publicity assured us that this bill would create civil liability on the part of the executor if he neglected his duties; however, in the actual provisions of AB 38, the most severe treatment which it proposes, if an executor has not diligently performed his duties, is that he might not be allowed to do it any more; he can be removed from his position. As for this new privilege which AB 38 gives the people, to negotiate fee rates with the lawyers, how can this be said with a straight face, since every American was born with that right?

The report of the Legislative Commission's subcommittee on Nevada probate statutes, called Bulletin No. 113, was enough to alert every thinking person to the fact that no real attention to probate problems was in the mill. In their presentation of the testimony of witnesses, they offered the statements by quite a number of persons. All of these persons, except one, were following professions which profit from probate procedures, in one form or another. The subcommittee report is so sensitive to the wishes of these professional groups that their recommendations are incorporated verbatim into the remarks of the subcommittee itself; in other words, they were accepting the views of those who profit from probate, as the subcommittee's own views.

There was also testimony by Mr. Don Perry, a responsible representative of well-established organizations of senior persons whose membership comprise a significant

part of the population of this state. His advice, however, seems to have been mislaid when the Commission report was being prepared.

The burden of Mr. Perry's presentation was the request that Nevada follow the method adopted by the state of Utah, in studying probate problems and legislation. The Utah method involved the creation of a panel which gave representation to all interested groups, the most important of these being the general public. Of the general public, those who may be most aware of the importance of probate procedures and best qualified to grapple with the accompanying problems are the senior members of the general population, and Utah has wisely sought their assistance by asking their representatives to serve on the probate study panel.

Mr. Perry pointed out that one valuable source of helpful material which the study panel should consider is the recommendations which are called the Uniform Probate Code. By no means is this the only source of information, and its contents should not be regarded as the solution to all probate problems; neither are its provisions free of new problems. Therefore, our position should not be viewed as merely an endorsement of the UPC. Developing all these particulars would occur in the free exchanges which would result in the deliberations of a balanced study panel. Mr. Perry could have saved his energy. His advice was ignored.

In the period during which this so-called study of probate problems was being carried out by the subcommittee, there were regular releases to the news media about its goal of eliminating probate abuses, about its desire to work with the people in solving their problems, and announcements of hearings at various times and places. Not mentioned by the news releases was that the subcommittee seemed to feel they had conferred a high honor on a citizen if they allowed him to appear before them. Only by following some particular procedure and receiving advance clearance could the citizen place his information before the subcommittee, and the citizen had now way of knowing this. I have been told that this was not so, but we have the people who were pushed aside, and who know what happened.

I can give testimony, myself, about my wish to help the subcommittee in its commendable undertaking. I was one of those who had been digging on probate problems

for about a year, at that time, and I actually thought the information I had gathered would be welcomed by the subcommittee. Of course, it would have been necessary for me to drive 150 miles before daylite to attend their hearing, but I was willing to do this for such an important cause. I didn't need to bother.

If the subcommittee learned about any probate problems, they didn't mention them in their report. From reading the report, one would not understand why the subcommittee had been set up in the first place. To the studious mind, a report is puzzling which does not admit that there are problems which set it in motion, and that the object of its work is to cope with those problems.

This presentation will not attempt to deal with the problems which the subcommittee should have been discussing. No reasonable coverage of that subject matter can be accomplished in a brief time. Instead, we must talk of how to approach the problems. We are requesting that there be done now, only what should have been done in the first place. We ask that there be substituted for the AB 38 proposal, the provision that a citizens' study panel be created, perhaps appointed by the governor, so constituted as to faithfully represent the whole population of the state; that this panel be invested with the power of subpoena; that it be adequately funded; that it make its studies between this legislative session and the next, and then present a report of its findings and recommendations to the next session of the legislature.

What we do not mean is some clever device which pretends to request participation by the citizens, but holds them at arms length; our meaning is participation in all the phases of the job which must be done: a joint determination of policies and procedures, and joint formulation of the report and recommendations which would follow. In such an undertaking, you will find our people eager to help, willing to work hard, and capable of understanding diverse viewpoints. We would not expect them to show much patience with some attempt to toy with them.

I have received the report that a Nevada state convention of the National Retired Teachers Association, one of the organizations which we represent, passed a resolution instructing our committee to go into the initiative process on this subject, if necessary. I was impressed by the fact that the vote of that convention was unanimous. However, we

are still not convinced that that step is necessary. We believe that reasonableness can yet prevail, and that is what we are seeking.

Quite obviously, AB 38 was originally intended to be a badge of merit for some person or group, for use in future elections to support a claim of having rendered great service to the people. But this plan simply hasn't worked out. Of that part of its language which makes some difference one way or the other, virtually all of it benefits the special-interest groups, at the expense of the general public. The small benefits which it contains for the people are scarcely a cosmetic improvement of present probate law. Passing the present AB 38 would have to stand as a service to those who wish to increase their control of probate procedures, not to thepeople who have asked for relief from its abuses. We are asked to become entranced with numbers, forgetting principles.

A balanced study panel of the general population can organize and analyze the information dealing with the real problems which exist, and bring the people's ethical standards to bear on them. The product of their work should be recommendations which the people of our state could put some faith in. This is what we are asking for.

John V. Carruth