

MINUTES

JUDICIARY COMMITTEE  
February 7, 1977

This meeting was called to order at 9:04 a.m. by Chairman Barengo.

Members Present: Chairman Barengo  
Vice Chairman Hayes  
Mr. Price  
Mr. Coulter  
Mrs. Wagner  
Mr. Sena  
Mr. Ross  
Mr. Polish  
Mr. Banner

Guests Present: Justice Frank Gregory, 1st Judicial Dist.,  
Carson City  
Harold Jocabson, Mayor, Carson City  
Mr. Etchemendy  
Mike Fondi, Carson City District Attorney  
Gino Marchetti, Attorney Generals' Office  
Justice Paul Goldman, 8th Judicial Dist.,  
Las Vegas  
Russ McDonald of Washoe County  
Pam Wilmore of Consumer Affairs Division,  
Department of Commerce  
Rusty Nash, Washoe County District Att. Ofc.  
Mr. Darrell Capurro, Exec. Director, Nevada  
Franchised Auto Dealers Association  
Tom Beatty, Deputy District Attorney, Clark Co.  
Pete Kelly, Nevada Retail Association  
Mike Brown ) Judiciary Planning Unit of  
Terry Reynolds) the Supreme Court

The guests above testified on the following assembly bills. The testimony will be set out by bill number, rather than in the particular order presented.

AB 36: Judge Goldman testified that this bill provides a lien for expenses of defense, which is proper, but questions why the one year limitation is proposed. He also discussed also, the medical treatment portion of the bill regarding inmates. Mr. Barengo stated that there is a bill right now which deletes the provision that the county has to pay for certain types of illnesses in the jail. Judge Goldman also discussed "buy money" in case cost.

Mr. Russ McDonald pointed out that section 5 (page 2, beginning on line 41) of the bill would bring the Washoe and Clark County public defenders into line with the state defender situation. He does endorse this. However, he questioned, whether or not by amendment, section 3 should read that the District Attorney should be directed to enforce section 3 rather than the public defender.

AB 37: Judge Goldman testifies that he thought this penalty was already recoverable in other actions.

Gino Marchetti asked that the Attorney General's Office be included along with the district attorney's office in this bill.

Pam Wilmore of the Consumer Affairs Division, Department of Commerce, testified that they are very much in favor of the bill. However, they would like to see the provisions of 598.270 added so that it would read exactly as 598.745 reads. Attached as Exhibit A is the proposed amendment.

Rusty Nash, Washoe County District Attorney's Office, he felt the omission of district attorney's from the enforcement section was probably inadvertent. He said also, that though they had managed to get along with the present wording, in order to enable enforcement of this act statewide, the district attorney should be added. He felt, also, that the Attorney General should be added as he usually represents the Department of Consumer Affairs.

Assembly

Continuing testimony on AB 37.

Mr. Darrell Capurro, Nevada Franchised Auto Dealers Assoc., stated he felt that the omission of the district attorney in this section was deliberate and that he felt it should be a question of this committee as to whether or not they want the county district attorneys to be assessing these civil penalties against their citizens in the same manner as provided for by the Commissioner of Consumer Affairs regulatory agency.

Mr. Pete Kelly, Nevada Retail Association, expressed opposition to the bill. He commented that several years ago when the Department of Consumer Affairs was established, there were extensive hearings relative to the Deceptive Trade Practices Act. And, the Commissioner was established and had the jurisdiction by which to enforce this law. He felt that under section 2, they are now adding the district attorney and in turn, adding another layer of jurisdiction. He asked if the businessman is now going to be faced with another set of rules from the district attorney's office. He also questioned the duplication of the functions of the district attorney and the Commissioner of Consumer Affairs.

AB 38: Judge Goldman stated he considered this extremely important. He suggested to the committee that the handling of writs after plea would mechanically expedite the trial calendar in Clark County. He gave further information on what it entails to set a trial date in relation to the plea. He felt that the section of this bill which allows the court to take a plea, without prejudice to entertain a writ, will really help them in expediting their calendars.

Mr. Barengo stated that he had a copy of a letter, referencing this bill, from Judge Gunderson to Judge Thompson who is in Judge Goldman's district. He discussed with Judge Goldman the necessity of these men setting up a committee to draft language regarding this bill and then reporting back to this committee with their recommendations.

Mike Fondi, Carson City District Attorney, testified that he has mixed emotions on this bill. He feels that, in principle, it is good. But, there are some problems in not only when these writs are filed but in their preparation. He said he felt as Judge Goldman did, that it would be a better bill when these things are modified.

Gino Marchetti stated his office would be opposed to this bill. He stated there are already a great number of habeas corpus petitions filed. He stated also, that if this bill is passed to allow filing at a later date, that this will increase, perhaps double, the number of habeas corpus petitions. He concluded that if you pass AB 38, you must pass AB 40 also. He stated it would be a disaster to pass the first without the latter. Inasmuch as his office does the vast majority of habeas corpus' in this state, he asked the committee to consider the problems of allowing a habeas corpus petition subsequent to the entry of a plea.

Tom Beatty, Deputy District Attorney Clark County, referred to a letter from one of the Supreme Court justices which pointed out some of the problems on this item. This was discussed briefly.

AB 39: Judge Goldman questioned the extent to which the legislature intends to control the operation of the District Attorney's Office throughout the state. He stated that he thought that might present a problem under the constitution.

Mr. Fondi stated that the district attorney's duties do not totally surround the criminal function, toward which this seems directed. He said that he does not see the value of this type of information to the legislative commission. Mr. Barengo attempted to explain further to Mr. Fondi, in further detail, what exactly the interim committees did expect of these offices in order to find out what their needs were and how they could help them. Considerable discussion followed and Mr. Fondi, finally, suggested that the committee put something in the bill which provides a uniform method of reporting.

Continuing testimony on AB 39.

Chairman Barengo concluded to Mr. Fondi, that he was aware of their problem and they would try to get some uniform statistics and develop a uniform reporting system.

Tom Beatty said there may be some question as to the depth of the information needed by the Legislative Commission, but, there is no question that the legislature needs information. However, the following points should, he felt, be considered: 1. Costs of securing such information. 2. Kind and nature of information to be collected. 3. How this information can be collated within the existing data processing structure. 4. The period covered by the information. Mrs. Hayes asked if his department was fully automated. Mr. Beatty stated that though it was not at this point, that it would be by the end of the year. He also stated that he anticipates that Washoe County will be doing the same, at some later date. He mentioned that at the present time in Clark County, there is almost no consistency in carry overs from one administration to the next.

AB 40: Judge Gregory testified in favor of this bill. However, in section two he cited that the effective date for adding the new judge would be January 1979 and after detailing for the committee the problems of his district and the immediate need for the additional judge, he suggested this be changed to become effective July 1, 1977.

Harold Jacobsen, Mayor of Carson City, also testified in favor of the bill and noted, in addition, that the urgent need for this new position is due to the fact that the state prison is in Carson City.

Mr. Etchemendy testified as to the economic impact this bill would have on Carson City and gave the committee further details concerning same. He stated that they do definitely want the new judge, but that they must figure out how to finance this new position. Mr. Barengo stated that he knew of a couple of proposals that would offset or help to offset this cost.

Mike Fondi testified for the bill and the fact that an additional judge is necessary.

Gino Marchetti testified in favor of the bill and detailed for the committee as to the Attorney General's caseload in the criminal division.

Judge Goldman testified in favor of this bill.

Harold Jacobsen reiterated that those in Carson City are all in agreement that they do need another judge. But, that they also recognize the cost is going to be substantial and asked what course they might take to get the state to directly finance this cost. Mr. Barengo told him that this bill would be directed to Mr. Mello in Ways and Means and that he should testify concerning this bill before that committee.

AB 41: Terry Reynolds testified that there are presently three judges who do not have copies of the NRS.

Judge Goldman questioned why the bill excludes annotations and digests. Mr. Barengo stated that the interim committee wanted basically to make sure that the judges received, at least, the statutes. Discussion ensued and the feeling was, at least for now, the highest priority is the statutes.

AB 42: Judge Goldman spoke of the extraordinary costs of court reporting. He stated that the Tri-State Judicial Conference conducted a study as to the accuracy in this electronic recording system with transcription following. He noted a judge has always had the absolute right to correct a transcript and now it would be more difficult. He stated that he wished to make two vital points. First, on appellate review, he would see electronic recording as being a forerunner to, perhaps, video tape recording.

Continuing testimony of Judge Goldman on AB 42.

He believes that litigation should end at the trial level and should not be tried ad infinitum up through the appellate courts. He also noted on this bill, that the Supreme Court decided a case and found that lower court judges do not have to be lawyers, provided that on the appeal you have a right to a trial de novo (a new trial) before a legally trained judge. If you are to change, by virtue of this bill, the manner in which district judges hear appeals from lower courts, on the record, you would then necessitate making every lower court judge, a lawyer. He stated that he is not in agreement with this.

Mr. Barengo explained to Judge Goldman that in regard to this bill, he felt that they were really talking about having some sort of record in the justice's courts and not the district courts. He made reference to NRS 139.080. Judge Goldman and Mr. Barengo further discussed this point.

Mr. McDonald said, with respect to the utilization of the recording devices, that they take no particular stand on this issue. However, some attention should be given to the court reporter's fees.

Mr. Fondi stated that he did not share the same feelings on this bill with that of Judge Goldman as to the dangers that it presents. He said that he thinks there is some real value in providing a recording of certain justice court proceedings and being able to review that record in order to make a determination.

Gino Marchetti stated there are a number of state court proceedings now which have held that justice court lay justice of the peace cannot even issue a valid search warrant. He offered that if the committee wants any additional help with regard to this bill, they would be glad to provide it. Mr. Barengo did ask for their help.

Mr. Beatty stated he saw some problems with this. First, commencing on page 2, section 4, two paragraphs are deleted (NRS 171.198) regarding authentication and certification of either the record or the transcript. He said there ought to be some device by which we certify what is filed with another court. Secondly, the deletion of sections 5 and 6 regarding the filing. Chairman Barengo brought to his attention the fact that this is found in NRS 189.030, page 3, section 6, line 25. Mr. Beatty then pointed out some problems they have had with 189.030. He spoke further on the problems of recording; the time it takes to transcribe. Mr. Barengo explained in detail what the interim committee's intentions were and summed it up by saying it was the majority contention that this recording system would make the quality of justice better. He stated that the thought also was, certainly, that the recording would be reduced to written form.

AB 43: Judge Goldman touched on the fact that they make use of masters at this time.

AB 44:

Judge Goldman stated that he would be inclined to be in favor of this bill simply because it sets a precedent to replace a court clerk with a court administrator. Judge Goldman also offered to the committee if they find need for the assistance of a court administrator, he invited them to use the resources of Mr. Wayne Blacklock in their county. Judge Goldman also offered for exhibit a compiling of statistics regarding felony cases and their filing in District Courts and an exhibit of PSIs (pre sentence investigations), which are both attached hereto as Exhibits B and C respectively.

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Continuing testimony on A.B. 44

Mike Brown, Judicial Planning Unit of the Supreme Court and Terry Reynolds of same office then testified in support of this bill.

AB 26: Mr. Russ Mc Donald, representing Washoe County, testified regarding this bill. He stated that as a previous statute reviser, this does leave, a loop hole and he thinks this has merit, merely to set the term of the appointed officer to expire on the following first Monday of January after the election. Mr. Mc Donald endorsed this bill.

Judge Goldman asked Chairman Barengo if he might mention certain assembly bills which are not presently on the agenda today.

AJR 1

Judge Goldman commented that this bill, in the case of the judges in Clark County, they are talking in terms of their court administrator or someone who is directly responsible to that court administrator. Any efforts to oust their county clerk ex officio court clerk as a result of AJR 1 will be vigorously opposed. He did state that he wishes to come up here again to testify if this is going to be heard at any great length.

AB 182 and

AB 129

Judge Goldman asked if any and all bills pertaining to this manner in which district judges sentence, would be brought to his attention, as he wishes to address himself to that. He asked if these particular bills could be scheduled on any day other than Monday or Tuesday.

There being no further business, Mrs. Wagner moved to adjourn the meeting, Mrs. Hayes seconded. Chairman Barengo adjourned the meeting at 10:40 a.m.

Respectfully submitted,

*Anne M. Peirce*

Anne M. Peirce, Assembly Attache

TO Bob Barengo  
Chairman, Assembly Judiciary

FROM Pam Willmore  
Deputy Director  
Commerce

SUBJECT AB 37

# Memo

DATE Feb. 7, 1977

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We would like to have 598.270 read as follows:

Any seller who violates any provision of NRS 598.140 to 598.280, inclusive, shall pay a civil penalty not to exceed \$2,500 for each violation which may be recovered by civil action on complaint of the commissioner of consumer affairs or the district attorney.

Our request merely adds the commissioner of consumer affairs as one who can also enforce the provisions of 589.140 to 280.

Thanks very much.

MONTHLY REPORT OF ACTIVE CRIMINAL CASES

	<u>Prior</u>	<u>71</u>	<u>72</u>	<u>73</u>	<u>74</u>	<u>75</u>	<u>76</u>	<u>77</u>	<u>BW's</u>	<u>TOTAL</u>	
<u>B</u>	Dec.			1	1	6	20	-	0	28	
	Jan.				1	1	8	-	0	10	
	Feb.										
	Mar.										
<u>C</u>	Dec.	1			1	3	4	-		8	
	Jan.	1		1			2	-	2	6	
	Feb.										
	Mar.										
<u>D</u>	Dec.			3	2	13	11	-		29	
	Jan.			3	1	6	25	-	8	43	
	Feb.										
	Mar.										
<u>E</u>	Dec.				1	4	13	-		18	
	Jan.				2	3	7	-	2	14	
	Feb.										
	Mar.										
<u>H</u>	Dec.										
	Jan.								1	1	
	Feb.										
	Mar.										
<u>J</u>	Dec.		1	5	10	81	302	-		399	
	Jan.		1	4	10	51	199	33	40	338	Cr.
	Feb.										
	Mar.										
<u>K</u>	Dec.		1	5	17	107	325	-		454	
	Jan.	1	1		13	66	236	32	38	387	Cr.
	Feb.										
	Mar.										
<u>L</u>	Dec.						2			2	
	Jan.						2			2	
	Feb.										
	Mar.										

MONTHLY REPORT OF ACTIVE CRIMINAL CASES

	<u>Prior</u>	<u>71</u>	<u>72</u>	<u>73</u>	<u>74</u>	<u>75</u>	<u>76</u>	<u>77</u>	BW's	<u>TOTAL</u>
<u>M</u> Dec.				4	16	64	301	-		385
Jan.			1	2	11	33	237	42	33	359
Feb.										
Mar.										
<u>P</u> Dec.				1	6	66	309	-		382
Jan.				2	4	37	217	47	28	335
Feb.										
Mar.										
<u>S</u> Dec.						1	3			4
Jan.						2	1			3
Feb.										
Mar.										
<u>Total</u> Dec.	1	1	1	19	54	345	1290	0	*	1709
Jan.	2	1	2	12	42	199	932	154	151	1498
Feb.										
Mar.										

190

\*Added in active cases

EXHIBIT B<sub>2</sub>



GUEST LIST

<u>NAME</u>	<u>REPRESENTING</u>	<u>WISH TO SPEAK</u>	
(Please print)		Yes	No
<i>Pam Wilmore</i>	Consumer Affairs -	✓	
<i>Henry Etchemendy</i>	Carson City <sup>State of NV</sup>	✓	
<i>Harold Jacobson</i>	C C Mayor	✓	
<i>John D. Ringold</i>	Nevada Supreme Court	—	
<i>Mike Brown</i>	Nevada Supreme Ct	✓	

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(74) JAN 55 PS

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