

JUDICIARY COMMITTEE

February 9, 1977

9:15 a.m.

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

Guests Present: Assemblyman Robert E. Robinson
Mr. Gino Manchetti, Attorney General's Office
Mr. Mike Fondi, District Attorney Carson City
Mr. Pete Kelly, Nevada Retail Association

Chairman Barengo called this meeting to order at 9:15 a.m.

Assembly Bill 45:

Assemblyman Robinson was first to testify on this bill, as its sponsor. He explained to this committee the reasoning behind this bill. He stated that he does not believe that it is the position of the court to plea bargain. He believes there should be a couple of amendments; as on line 5, where it reads "district attorney". He feels it should read "district attorney or deputy district attorney". Additionally, on line 6 where it mentions "attorney general", that it should include "deputy attorney general". Discussion followed.

Mike Fondi, Carson City District Attorney, then testified on behalf of Tom Beatty of Clark County District Attorney's Office, as well as himself. Chairman Barengo then made reference to a letter from Mr. Tom Beatty dated January 27, 1977 in regard to this bill, which is attached hereto and marked as Exhibit A. Mr. Fondi stated that after hearing Mr. Robinson's presentation he better understands the problem Mr. Robinson was trying to get at and he said he thinks Mr. Beatty did not entirely understand the thrust the bill was aimed at and that he would have reacted more favorably to it had he really understood it. He said Mr. Beatty's objections to the bill stemmed from his thought that it was going to require the presence of the District Attorney or the Attorney General at the actual plea negotiating entry. He said Mr. Beatty thought the ground was covered in NRS 171.202 and NRS 252.090. Mr. Fondi further stated that he agreed with Mr. Robinson and that if, in fact, the court is entering into plea negotiations without the presence of a prosecutor that it is not a proper exercise of a judicial function. If this bill will prevent that, Mr. Fondi said that he is for it and that Mr. Beatty would probably react the same way. Thereafter there was considerable discussion on the negotiating of sentences by defendants with the court. Mr. Robinson

stated that what he was primarily concerned in here would be the more serious crimes.

Mr. Gino Manchetti of the Attorney General's Office then explained the Attorney General's standpoint of A.B. 45. He stated that perhaps rather than listing all of the statutes which they might be acting under, they might solve both problems raised at this meeting by striking ". . . unless the district attorney of the appropriate county or the attorney general acting pursuant to NRS 228.170" and replace it with "prosecuting attorney is present". Mr. Fondi then stated that he also wishes that the word "complaint" be stricken. Mr. Manchetti then concluded with the reading that they would all want for this bill"

"A defendant shall not be permitted to plead guilty or nolo contendere to a lesser charge than the charge contained in the original indictment or information unless the prosecuting attorney is present when such a plea is made to the court."

Assembly Bill 93:

Chairman Barengo made reference to a letter from the District Attorney for Humboldt County which is entered here as Exhibit B, supporting this bill.

Mr. Mike Fondi then testified that he feels the thought in A.B. 93 is appropriate, especially in view of the inflation of our times. His only caution that he made was he stated that the bill itself might not do the whole job of increasing the bottom line in the dollar amount between felonies and misdemeanors. He feels it needs to be more thorough in making the bill more uniform in its application. Mrs. Wagner offered that this is a skeleton bill and it was drafted briefly to get the subject matter in the hearing process. If there was some appetite for the bill, she said, then the necessary changes would be made. Mr. Fondi did state that he was not speaking on behalf of the District Attorney's office, but only on behalf of himself. Mr. Manchetti then furthered discussion of this bill with the committee. He feels that if the dollar is worth less, then let us look at both aspects that if they are going to raise the level of the punishment, to consider raising the level of the applicable fine. Mr. Pete Kelly of the Nevada Retail Association testified that he is somewhat concerned about this bill. He stated that he agrees with Mr. Manchetti that if this happens you should raise the fine. He thinks that something like this bill states might encourage a shoplifter to take something that costs a little bit more. Mr. Fondi then mentioned then he feels that as much could be accomplished, perhaps even more, by making a misdemeanor punishable by up to a year in the county jail and/or a fine of \$1000.00. He feels that this would dramatically change the workloads of district courts and justice courts.

There being no further business, Chairman Barengo adjourned the meeting at 10:15 a.m.

Respectfully submitted,

Anne M. Peirce

Anne M. Peirce, Secretary



217

Office of the District Attorney

CLARK COUNTY COURTHOUSE
LAS VEGAS, NEVADA 89101
(702) 386-4011

January 27, 1977

Assemblyman Bob Barengo, Chairman
Assembly Judiciary Committee
Nevada Legislature
Carson City, Nevada

Re: AB 45

Dear Bob:

The above named Bill says simply that the district attorney of the appropriate county or the attorney general must be present before a defendant may be permitted to plead guilty or nolo contendere to a lesser charge than the charge contained in the original indictment, information or complaint.

Since NRS 169.075 defines district attorney to include any deputy district attorney, and since the district attorney through his deputy must already be present in court at any time a felony matter is considered, the Bill would seem to accomplish precisely nothing.

If, however, the goal of the Bill is to reduce what has been called plea negotiation or plea bargaining then there are several things that need to be taken into consideration. First, the Bill is defective because it fails to have a fiscal note attached relating to the impact both on the state and local level. NRS 218.2723 requires any Bill which has financial impact on a local government to include a fiscal note after consultation with the appropriate local government representatives before the Bill may be considered at a hearing.

It is quite clear that if any attempt to restrict what is interpreted as plea negotiation or plea bargaining is to be effective, it is to have a drastic impact upon the financial resources of the county and state. In the last fiscal year alone this county processed to conviction 931 felony matters. That represented a 50% increase over the previous year. There is no way given the resources of the office and the financial resources of the County of Clark that 900 trials could occur.

GEORGE HOLT
DISTRICT ATTORNEY

THOMAS D. BEATTY
ASSISTANT DISTRICT ATTORNEY

JAMES BARTLEY
COUNTY COUNSEL

CHIEF DEPUTIES

DONALD K. WADSWORTH

RAYMOND D. JEFFERS

MELVYN T. HARMON

DAN M. SEATON

LAWRENCE R. LEAVITT

H. LEON SIMON

JOEL M. COOPER

JOE PARKER
CHIEF INVESTIGATOR

KELLY W. ISOM
ADMINISTRATIVE OFFICER

Assemblyman Bob Barengo
AB 45
January 27, 1977
Page 2

Further, the many reasons for plea negotiation that have nothing to do with resources are not addressed in the Bill. The best recent example, incidentally, involved a victim who attempted suicide before trial of the case in which she was the victim. Because of the extremely grave impact upon that victim were she required to testify this office had to consider and did in fact carry out a plea negotiation in which the defendant still wound up before the court facing a substantial sentence.

As it stands now it seems very clear that no legislative action can have a substantial impact on the problems facing criminal justice in this state unless provision is made for more money to go to hire the police officers, parole and probation officers, the district attorneys, even the public defenders, needed to effectively process the criminal case load. In addition, of course, more judges are needed and all will be to no avail whatsoever if we do not have vastly increased prison facilities.

At the present time our prison is designed to hold somewhere in the neighborhood of 800 people. It has considerably more than that now. We have already convicted in this county in the last fiscal year more than sufficient numbers of persons to fully populate the prison. The net result of having no facilities to put prisoners in has been that the Parole and Probation Department and District Judges have been forced to grant probation in increasing percentages of cases through the tacit recognition that there is no place to incarcerate these persons.

Of course I will be more than happy to appear and discuss many of these issues and problems in greater detail when this or a similar Bill comes to hearing.

Regards,


Thomas D. Beatty
Assistant District Attorney

cc: Karen Hayes
Assembly Judiciary Committee



HUMBOLDT COUNTY DISTRICT ATTORNEY

HUMBOLDT COUNTY COURT HOUSE
WINNEMUCCA, NEVADA 89445
(702) 623-2517

February 4, 1977

William Macdonald
District Attorney
County Counsel

Assembly Judiciary Committee
Nevada State Legislature
Carson City, Nevada 89710

Re: AB 93, Felony increase to \$300

Honorable Committee Members:

I want to go on record in support of this measure.

I fear that inflation has rendered the \$100 threshold pretty meaningless. A more realistic amount is appropriate before the expense of a district court prosecution is initiated.

The enclosed listing of state laws showing which are misdemeanors, gross misdemeanors and felonies may be of interest to you.

I would be happy to answer any questions you may have.

Yours truly,


WILLIAM MACDONALD

WM/les
Enc.