

SENATE JUDICIARY COMMITTEE

MINUTES OF MEETING

FEBRUARY 9, 1977

The meeting was called to order at 9:10 a.m. Senator Close was in the Chair.

PRESENT: Senator Close
Senator Bryan
Senator Dodge
Senator Foote
Senator Sheerin
Senator Gojack
Senator Ashworth

ABSENT:

SB 167 Subjects grand jurors to civil liability for publication of prohibited report.

Senator Cliff Young testified before the Committee on behalf of this measure. He stated that the problem this bill addresses is the abuses of reports of grand juries. Some reports have, by innuendo, criticized and imputed quasi-criminal or criminal activity to public officials without indicting and, in the minds of most people, these reports would not be published in the newspaper if they were not true. This, in his opinion, is tantamount to character assassination for which the victim has no recourse. He does not have an opportunity to appear before the grand jury to defend himself nor can he confront those who testify against him.

Senator Close expressed concern over line 18 of the bill in that it should, in his opinion, restrict damages to situations where the report indicated there was an indictable offense but for which the grand jury did not indict. On that point, Senator Bryan stated that the present law does not prohibit the grand jury from being critical. Rather, the only prohibition in the law is that the grand jury shall not single out a person and impute, by innuendo or otherwise, wrongdoing which constitutes an indictable offense and not indict that person. He felt that the grand jury process in Nevada is not only used to prosecute by way of indictment but that it also performed an investigatory function that should not be lost sight of.

Senator Foote stated that she was in opposition to this bill. She felt that many times an individual does wrong but nothing

SB 167 that he could be indicted for. She felt that the public has a right to know these things. She further stated that people would not be willing to serve on a grand jury if they felt there was a possibility of being sued.

Senator Bryan submitted for the Committee's review, an article by Edmond D. Edelman entitled "Correcting Defects of the Grand Jury" which talks about providing a witness with counsel when appearing before the grand jury and also that counsel for the grand-jury should be independent and separate from the District Attorney. Under Nevada law, the grand jury has the right to retain independent counsel however he felt that most people were not aware of that. (see attached Exhibit A)

Senator Ashworth felt that in investigations and indictments of public officials the District Attorney should not be allowed as counsel for the grand jury and that independent counsel should be required.

Mr. Frank Bender testified in favor of this bill. He stated that he had served on a grand jury and that in some respects, he agreed with Senator Foote's observation that it would be difficult to get people to sit on a grand jury if they felt they could be sued. However he felt that this bill was necessary in that in some instances, the District Attorney led the grand jury into reporting what he wanted reported. He suggested that perhaps the District Attorney or independent counsel be charged with instructing the grand jury on indictable offenses contained within their report.

In further discussion of the bill, it was the decision of the Committee to amend the bill as follows:

- 1) The District Attorney or independent counsel shall inform the grand jury of any indictable offenses contained in their report.
- 2) Concerning investigations into the functions of government, in counties with a population over 100,000 independent counsel shall be used and in counties of less than 100,000 independent counsel may be used. The District Attorney in the smaller counties will be charged with informing the grand jury of their right to independent counsel.

Senator Ashworth moved to amend and do pass.
Seconded by Senator Gojack.
Motion carried. The vote was as follows:

VOTING AYE: Senator Close
Senator Bryan
Senator Dodge
Senator Gojack
Senator Sheerin
Senator Ashworth

VOTING NAY: Senator Foote

SJR 10 Proposes constitutional amendment to establish staggered terms for district judges.

The Honorable Roy L. Torvinen testified before the Committee on this matter. He stated that he did not know what problem this bill was seeking to overcome. Looking at this historically, there are usually only 10%-20% of these elections ever contested. He felt that the only problems that could arise over this bill were if the terms of office were only 2 years and how to go about salary increases since, constitutionally, they cannot raise their salary, or lower it, during their term of office.

He further suggested that perhaps the Committee should withhold action until the Nevada Supreme Court decides whether the present term of office is 4 or 6 years.

The Honorable James J. Guinan appeared before the Committee on this measure. He stated that he had no objection to staggering terms but that he did not see the necessity for it. He further stated that he would be opposed to a 2-year term of office.

The Honorable Keith Hayes testified before the Committee on behalf of this bill. He stated that personally, he was in favor of staggering the terms in that when the judiciary runs as a block, they become too formidable a foe for those who would perhaps like to make some changes within the judiciary. He too expressed concern over the length of term and salary increases under a staggered term process.

In further discussion of the bill, Senator Dodge suggested that perhaps the Committee should have Senator Gibson testify before them on this matter in that he had introduced it and could possibly shed some light on the reasons for it.

No action was taken at this time.

SB 2 Changes certain filing and publication requirements for corporations.

Senator Dodge stated that he had received a letter from the Mason Valley News asking that on the five time publication requirement that it be reduced to one because it would help them a little financially. He stated that they get one fee regardless of whether they publish once, twice or five times.

Senator Ashworth stated that he was opposed to that amendment in that it, in effect, was subsidizing the media.

SB 2 Senator Dodge moved to reduce the number of publications from 5 to 3.
Seconded by Senator Bryan.
Motion carried. The vote was as follows:

VOTING AYE:	Senator Close	VOTING NAY:	Senator Ashworth
	Senator Bryan		
	Senator Dodge		
	Senator Foote		
	Senator Sheerin		
	Senator Gojack		

The Committee reviewed the minutes of the following meetings and approved them unanimously:

January 18, 1977
January 24, 1977 - with two amendments
January 25, 1977
January 26, 1977
January 28, 1977

Senator Close presented the following for Committee introduction:

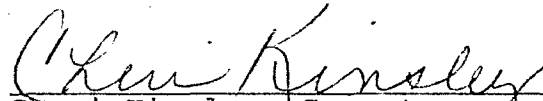
BDR 48-768 Eliminates conflicting time period to appeal water rights judgment to the Supreme Court.

Committee introduction unanimously approved.

Senator Bryan informed the Committee that he had been requested to introduce a bill regarding family visitation rights in the state prison. The Committee agreed on introduction by the Committee as a whole.

There being no further business, the meeting was adjourned.

Respectfully submitted,


Cheri Kinsley, Secretary

APPROVED:

SENATOR MELVIN D. CLOSE, JR., CHAIRMAN

Correcting defects in the grand jury

Edmund D. Edelman

Special to The Los Angeles Times

In recent years the grand jury, long considered a protector of individual rights, has come under attack by responsible members of the criminal-justice community. It is, they say, an antiquated institution which no longer stands as a shield between the prosecutor and the accused, but which has, in fact, become a tool of government — the very authority it was created to watch.

In California, such critics claim, the grand jury is seldom representative of the community, being composed primarily of middle-aged or retired middle-class whites. (More than 75 per cent of current members of the Los Angeles County Grand Jury identify themselves as retired businessmen or homemakers.)

In addition, the constitutional protections normally enjoyed in criminal proceedings are not afforded in either federal or country grand jury hearings, which are held in secret.

Originating in 12th-century England, the grand jury became an intermediary between the crown and the people, reviewing charges to ascertain whether the prosecutor had reasonable evidence to bring a citizen to trial. In this country the founding fathers added it to our system of justice in the Fifth Amendment, which guarantees that in federal cases, "no person shall be held to answer for a capital, or otherwise infamous crime," unless indicted by a grand jury. The stipulation was considered a means of protecting citizens against repressive prosecution by the newly formed government — an all-too-familiar situation to the colonists under British rule.

Today, the chief value of the grand jury is that it can be used by prosecutors to handle extremely complex cases. It is also useful in situations where secrecy is needed — for example, in protecting the reputations of potential defendants or in carrying out highly inflammatory investigations.

In a hearing which I held last year in my capacity as overseer of the country grand jury for the Board of Supervisors, many criminal-justice experts urged reform of the system to make it fairer, more effective and more reflective of the community.

Based on testimony at those hearings, I support five steps which could bring substantial improvement:

—The grand jury should have a legal adviser independent of the district attorney's office. At present, the grand jury relies primarily for impartial legal counsel on the same agency which is attempting to persuade it to return an indictment. (F. Lee Bailey once echoed the feelings of many critics when he called the grand jury "a flock of sheep led by the prosecutor across the meadows to the finding he wants.") An independent staff for the grand jury would prevent specific instances of undue influence, and eliminate possible charges of collusion or unfairness.

—The functions of the grand jury should be divided among two juries, one to consider criminal matters and the other to scrutinize local government operations. Too heavy a workload is now imposed on the single grand jury charged with both considering evidence for criminal indictments and auditing the complex operations of various county departments and programs.

—To provide more time for civil grand jurors to become familiar with country government and to carry out long-range audits, the terms of civil grand jurors should last two years and be staggered. This would allow continuity in investigations and assure that at all times half the jurors would have at least a year's experience in the financial and management complexities of local government. Furthermore, each grand jury would then remain in existence long enough to argue for adoption of its yearly recommendations.

—Members of the criminal jury should be selected from the list of regular petit court jurors. This would help meet the constitutional objection that grand jury indictments are not returned by a jury of the accused's peers.

—Witnesses in grand jury investigations should be able to have counsel present and seek his advice. The current procedure tends to be intimidating because a witness must face the district attorney and the grand jurors alone; he must decide which questions to discuss with counsel, excuse himself from the hearing room, reconstruct the questions accurately and then remember his attorney's advice when he responds to the grand jury.

England, the nation that originally gave us the grand jury, abolished it in 1933 after a century of debate. Closer to home, the Board of Supervisors of Fresno County (Calif.) has recently called for the elimination of the grand jury's criminal-indictment function.

My own belief is that we should neither abolish the grand jury nor ignore its obvious defects. By instituting the changes I have recommended, we can restore the grand jury to its original position as "a sword and a shield" — the sword, its investigative power to pierce through the obscurity of government operations; the shield, its protective power to ensure a fair and impartial indictment process by a panel of jurors representative of the whole community.

(Edmund D. Edelman is chairman of the Los Angeles County Board of Supervisors.)