Members Present:

Chairman Hayes
Vice Chairman Stewart
Mr. Banner
Mr. Brady
Mr. Coulter
Mr. Fielding
Mr. Horn
Mr. Malone
Mr. Polish
Mr. Prengaman
Mr. Sena

Members Absent:

None

Guests:

Michael L. Medema, Department of Prisons
M. Stephen Cerstvik, Department of Prisons
Barbara Bailey, Nevada Trial Lawyers
Sam Mamet, Clark County
Bill Curran, Clark County Counsel
Will Diess, Las Vegas Police Officers
O. C. Lee, Southern Nevada Police Officers Association
James L. Parker, City of Reno Police Department
Vince Swinney, Washoe County Sheriff's Department
Barney Dehl, Nevada Highway Patrol
Mary Finnell, Washoe County
Larry Struve, Deputy Attorney General, State of Nevada
Larry Ketzenberger, Las Vegas Metro Police Department
Charles Zobell, City of Las Vegas
Russ Neilsen, UPI
Dan M. Seaton, Clark County District Attorney's Office
G. P. Etcheverry, Nevada League of Cities
Bill Parrish, Department of Prisons
Pete Kelley, Citizens for Private Enterprise
Bob Gagnier, State of Nevada Employees Association
Bob Felton, State of Nevada Employees Association
Ray Niesley, Tahoe Regional Planning Agency
Robert G. Anselmo, Director of Public Safety, Henderson
Bernard Curtis, Douglas County Sheriff's Office
Bob McPherson, Director of Personnel and Employee Relations, City of Las Vegas
David Harding

Chairman Hayes called the meeting to order at 8:13 a.m.

ASSEMBLY BILL NO. 22

Allows costs in cases involving public bodies.

Testifying in favor of A.B. 22, the following witnesses were heard by the Committee, with summaries of their presentations noted:

Michael Medema stated that over the past three years, 150 lawsuits have been filed against the Department of Prisons and that the Department feels A.B. 22 would deter filing of so many suits by the inmate population.

Mr. Stewart stated that in a regular civil action, if the defendant prevails, payment of attorneys' fees becomes a matter of court discretion, if the suit is under $10,000.00. He noted that the language of A.B. 22 would prevent court discretion pertinent to such attorneys' fees unless determination was made that the case was frivolous, unreasonable or groundless. Mr. Stewart added that case law now exists which determines whether a political subdivision is entitled to attorneys' fees in a tort action, although not statutory, and that the proposed bill is stricter regarding such determinations than is existing case law.

Larry Struve, Deputy Attorney General for the State of Nevada, was next to address the Committee. He explained that the proposed bill was an outgrowth of an interim committee and that he had been involved in those commitee hearings in his previous capacity in the Civil Division of the Washoe County District Attorney's Office. That office, he said, had experienced substantial increase in numbers of cases filed against County officials and employees. Many of those cases were tenuous in nature, and Washoe County defending attorneys felt there should be statutory provision to discourage frivolous or groundless lawsuits which cause unnecessary expense for the taxpayers. Based upon those Washoe County experiences, Mr. Struve had recommended, to the interim committee, drafting of a bill like A.B. 22, which would, upon determination that a lawsuit was frivolous, etc., enable the court to require reimbursement to the political subdivision in the form of attorneys' fees. He stated that such a bill would foster settlement of many such matters out of court, saving both parties time and money.

Chairman Hayes inquired as to whether plaintiffs' rights of due process would be infringed upon by such legislation, from plaintiffs' fears of filing when the possibility exists that a suit may be labeled frivolous. Mr. Struve stated that current language provides that filing a suit does not entitle the political subdivision to seek attorneys' fees per se, and that if a suit is so labeled, a certain amount of discovery would have to be made after commencement of the suit in order for the determination of frivolity to be made. He added that the main thrust of the proposed bill would be to get the matter into court so that a determination could be made.

Mr. Stewart noted that present civil provisions allow court costs, etc., when an offer of judgment has been made and the court awards in that amount or less. He asked whether A.B. 22 would eliminate availability of recovering those costs and fees. Mr. Struve stated that he felt other provisions of the Nevada Revised Statues would prevent problems with recovery, specifically those statue provisions referring to offers of judgment. He also noted that his experience is that offers of judgment are rarely used in these types of suits; Mr. Stewart countered that insurance attorneys often use offers of judgment.

Sam Mamet of Clark County introduced Bill Curran, Clark County Counsel, who stated he felt the new subsection 6 of A.B. 22 was impractical, was simply a cosmetic change. Additionally, he stated that findings filed against the county would rarely be viewed as frivolous, etc., by the court, and felt that determination regarding frivolous nature of a suit might more often affect the political subdivision. He agreed with Mr. Stewart that A.B. 22 would probably impose stricter standards than those already in effect under case law.

Mr. Banner noted that the interim committee which had proposed A.B. 22 was primarily concerned with finding better and lower cost liability insurance for public employees. He stated that inclusion of these sorts of statute provisions often deters rate increases and that the interim committee's primary concern was saving public monies in matters of public employees' liability insurance coverage.

ASSEMBLY BILL NO. 30

Changes certain procedures for defending actions against public officers and employees.

Mr. Struve testified that A.B. 30 also emanated from an interim committee study regarding protection of public employees from liability. As background, he noted that in 1977, the Nevada Legislature had substantially amended NRS 41.0337, but hearings on the statute were not extensive at that time. Certain procedural problems in that bill were enacted into law, and A.B. 30 was drafted to address those problems. Local District Attorneys were mandated by NRS 41.0337 to defend suits brought against county officers and employees, inconsistently with the concept of local governments purchasing liability insurance for those persons, where the liability carrier would hire private defense counsel as part of the insurance contract. Problems of conflict might arise, he noted, when decisions of the chief legal officer of the political subdivision or the State might run counter to those of the insurance carrier's counsel. Mr. Struve cited Section 5, subsection 3, page 4, which provides that the Attorney General or the chief legal officer of the political subdivision may require defense by the insurance carrier's designated private counsel, as obligated by the insurance contract. He also said his understanding is that the Nevada District Attorneys Association supports that change effected by A.B. 30.

Mr. Struve further cited particular sections of A.B. 30 as follows, noting that by February 7, 1979 he would get written suggestions regarding amendments to the bill to the Committee on each matter so cited:

Section 8, page 5, in re "rebuttable presumption"
Section 3, page 3, line 30, in re "10 days"
Section 3, subsection 3, in re "15 days"
Section 3, subsection 4, line 7, in re "45 days"
Section 4, lines 15 through 18, in re conflict
Section 5, subsections 1 & 2, lines 23 to 30, after "determines", add "at any time prior to trial"
Section 7, lines 16 & 17, in re indemnification and contribution

Chairman Hayes expressed concern that extension of answering times, if the bill were so amended, might protect the State more than the private citizen would be protected. Mr. Struve responded that concern for extension is prompted by the fact that the bill calls for mandatory defense by the State and the feeling that investigation of the matter in question should be extensive to determine whether resources of the State should be committed.

In regard to Mr. Stewart's expressed concerns about conflict of defense matters, Mr. Struve explained that the suggested changes to A.B. 30 would address that concern and provide that even after certification, that the defense of an officer who may not be acting in the course and scope of his employment can be defended by independent counsel, and the State can be defended by the Attorney General, with respective presentation of defenses. With no certification, the only role of the Attorney General would be to represent the State; and in that event there is no presumption. He further expressed his opinion that employment of special counsel to represent the officer or employee before certification would be the responsibility of the employee and that after certification, the responsibility for employment of special counsel might well be the responsibility of the State according to existing law noting mandatory duty of State or political subdivision to defend the officer or employee.

Next to appear before the Committee on A.B. 30 was Ray Neisley, who noted that the proposed bill did not cover the class of employees exemplified by the Tahoe Regional Planning Commission; he advocated amending the bill to include those employees of the State.

Bill Curran noted that he agreed with Mr. Struve's comments regarding A.B. 30 and noted that Section 4, subsection 3 of the bill clarifies the law and brings the statute into agreement with current practices.

ASSEMBLY BILL NO. 40

Enumerates certain employment rights and establishes standards for conduct of certain investigations and interrogations of peace officers.

Assemblyman Banner informed the Committee that A.B. 40 was drafted in response to feelings of some administrators at the county level that certain employees, i.e., peace officers, are more subject in their line of work to liabilities associated with false arrest, speeding, dangerous weapons, etc., and have expressed frustrations in that regard.

Will Diess, President of the Las Vegas Police Officers, spoke in support of A.B. 40. He cited several pieces of Federal and state legislation, pending and enacted, which deal with peace officers' rights and noted that Committee members will each be provided with a packet of those items and other materials for review within the next several days. Particular legislation cited included Federal H.B. 181, California A.B. 301, and a letter dated April 11, 1972 from Senator Alan Bible in re H.R. 7332. He noted that his support of the bill was based on its provision of guidelines concerning interrogation of police officers and whether or not legal counsel would be provided to officers during interrogations. He commented, too, that he felt the bill would serve to assist small communities not presently under civil service nor having financial ability to obtain bargaining power protection.

In response to Mr. Sena's inquiry, Mr. Diess answered that he did not know how many states in addition to California have enacted this type of legislation, but that he is aware that more than one hundred police departments have collective bargaining agreements for police officers in interrogation matters. Mr. Sena asked for comments regarding particular parts of the proposed bill, including Section 3, page 1; Section 5, page 2; Section 6, subsection 2, lines 18 and 19; and Section 9, subsection 3, lines 16 through 19. Subjects under discussion included prohibition of political candidates' support, polygraphy tests, signature of adverse comments acknowledgments in officers' files, visits and/or information and/or photograph release from department records of officers to news media, and compensation for officers' interrogation during off-duty hours, as specified in Section 9, subsection 1, page 2, lines 45 through 48. Mr. Diess suggested that perhaps Committee members would want to amend the language of A.B. 40 in those portions of the bill, but urged passage of the measure.

In answer to Chairman Hayes' question, Mr. Diess responded that Section 10, subsection 1, page 3, lines 45 through 48, indicated to him that peace officers were entitled to a reading of rights before interrogation, as is a private citizen.

Mr. Sena then cited Section 4, page 1, line 13, and asked Mr. Diess if a background check is done before a policeman is hired and whether the bill would change that procedure. Mr. Diess answered that a background pre-hiring check is done for each officer and that the bill language applied only to those already on the job.

Mr. Diess also answered that his understanding of Section 8 related to the possibility of peace officers having to work in areas not familiar to them, as exemplified by an incident in California. He further responded to Mr. Sena that he did feel that Section 9, subsection f, page 3, line 20 was necessary for protection of rights of police officers because of possible need to validate testimony in future litigation against an officer; Mr. Sena indicated wording should be changed from "may" to "shall" if that intent were to be effected.

Mr. Sena then read statements from a letter of Robert G. Anselmo, Public Safety Director, City of Henderson, in opposition to the bill. A copy of that letter is attached hereto as Appendix A.

Mr. Brady commented that in reference to Mr. Diess' earlier statement regarding public attitudes dishonoring peace officers, the bill might ensure special rights for peace officer, further alienating the public. He added that he felt legislators had equal responsibility to the public trust as did peace officers and indicated he did not feel special expression of rights was appropriate in either case.

Mr. Horn asked Mr. Diess if the bill contained any provision for enforcement should it become law, and Mr. Diess agreed the enforcement language should be added to the bill. Chairman Hayes commented that perhaps other State employees, i.e., teachers, should be included in the bill if added protection were its intent. Mr. Diess responded that such other groups are protected by contracts and that peace officers' bills of rights are not unique elsewhere.

Next to testify was O. C. Lee, representing the Southern Nevada Police Officers Association, who supported Mr. Diess' position. Mr. Stewart noted that the bill defines a peace officer, that definition already being denoted in another portion of the NRS. Mr. Lee agreed that the language of A.B. 40 could be amended so that clerical personnel would be deleted from provisions of the measure.

Those testifying in opposition to A.B. 30, were, with summaries of testimony given, as follows:

Mr. Vince Swinney, Under-Sheriff for Washoe County noted that no constitutional right exists that a person may become a peace officer, rather the profession is a matter of choice. He cited cases in California in which peace officers had been protected more often by such tests than reputationally harmed by them.

He noted that investigative and administrative guidelines belong in local contracts and negotiation documents which can be changed more quickly and easily than can State statutes, adding that bill passage would increase monetary and time costs in investigative matters. Mr. Swinney also stated that news media have their own information sources, exclusive of peace officers' personnel records and stated he felt the bill would cause every release of information about peace officers to erroneously reflect information sources as being department records, further encouraging negative citizen reaction against police in general.

Barney Dehl, Chief of the Nevada Highway Patrol, stated he felt the bill should be voted down in its entirety. He noted he feels a policeman subordinates his rights as a private citizen to his responsibility to his community; further, that the bill would protect only the "bad cop".

James Parker, Chief of Police of the Reno Police Department, also opposed the bill in its entirety. He stated he felt the bill would negate management authority within police departments as its language is threatening to decision-making for administrators. He also noted he felt local and State government bodies have appropriate and sufficient rules to address these concerns for 80 to 90 per cent of presently employed peace officers.

Larry Ketzenberger, representing the Las Vegas Metro Police Department concurred with comments regarding the bill's affecting police department administration, noted his opposition to the bill and stated he, too, felt the bill would protect only the dishonest policeman.

Next appearing was Robert Anselmo, who read from a statement opposing the bill. A copy of that statement is attached hereto as Exhibit C.

Bernard Curtis, Under-Sheriff of Douglas County, appeared and stated his office had contacted all but two county Sheriffs in Nevada, those not contacted being in Eureka and Lincoln counties, and that all sheriffs contacted were against passage of the bill.

Mr. Diess stated that Mr. Anselmo's point regarding constitutional guarantee of rights for policemen was well taken, and that he felt more and more policemen would exercise those rights by taking the Fifth Amendment when interrogated, re-emphasizing that police officers favor passage of A.B. 30 in order that interrogation guidelines may be clearly spelled out.

Final witness to appear regarding A.B. 30 was Bob McPherson, Director of Personnel and Employee Relations for the City of

Las Vegas. Mr. McPherson stated he was basically opposed to A.B. 30 and suggested small communities might be better served by establishment of civil service and bargaining protections in order to preserve a balance between labor and management in those entities.

ASSEMBLY JOINT RESOLUTION 21 OF THE 59TH SESSION

Proposes to amend Nevada constitution to expand classification of crimes for which bail may be denied.

Dan Seaton of the Clark County District Attorney's Office told the Committee many people accused of heinous crimes flee the jurisdiction, noting that denial of bail would prevent their leaving. He relayed support of the measure from Steve McMorris, representing the Nevada District Attorneys Association. He added that the language of the resolution would not prevent issuance of bail on a discretionary basis. Mr. Stewart expressed concern that the language of the resolution would possibly prevent discretionary bail provision and suggested that he and Mr. Seaton might have further discussion regarding that concern.

The following action was taken by the Committee on measures as indicated:

A.J.R. 21 of the 59th Session

Motion: Mr. Horn moved, seconded by Mr. Polish, for passage of the resolution. Motion carried with the following vote:

Majority: Chairman Hayes
Mr. Brady
Mr. Coulter
Mr. Fielding
Mr. Horn
Mr. Malone
Mr. Polish
Mr. Prengaman
Mr. Sena

Minority: Mr. Stewart

Absent: Mr. Banner

A.B. 22

Referred to subcommittee, consisting of Chairman Hayes and Mr. Banner.

A.B. 40

Motion: Mr. Polish moved, seconded by Mr. Stewart, to indefinitely postpone action on the bill. The motion carried with the following vote:

Majority: Chairman Hayes
Mr. Stewart
Mr. Brady
Mr. Coulter
Mr. Fielding
Mr. Polish
Mr. Prengaman

Minority: Mr. Banner
Mr. Horn
Mr. Sena

No Vote: Mr. Malone (by reason of conflict of interest)

A.B. 30

To be heard again by Committee by February 7, 1979, upon receipt, from Larry Struve, Deputy Attorney General for the State of Nevada, of a report as noted earlier in these minutes.

There being no further business to come before the Committee, Chairman Hayes adjourned the meeting at 10:35 a.m.

Respectfully submitted,

Jacqueline Belmont
Secretary

U.S. v. Alvarez, 472 F.2d 111 (1973)

Defendant was convicted of illegal importation of heroin and illegal possession of heroin, and he appealed.

The Ninth Circuit Court said in regard to the polygraph: "In line with our decision in U.S. v. DeBetham, 470 F.2d 1367, we hold that the trial judge did not abuse his discretion in rejecting the offer of the polygraphic evidence.

U.S. v. Watts, 502 F.2d 726 (1974)

Defendant was convicted of conspiring to bribe public officials, bribery, and giving false testimony before a grand jury. On appeal, defendant claimed that the results of a polygraph examination should have been admitted into evidence.

The Ninth Circuit Court simple said, "we cannot say that the trial court clearly abused his discretion in rejecting the offer."

William Scott Hepburn v. Joseph L. Alioto, et. al., No. C-71-2309-OJC (November 21, 1974)

The U.S. District Court heard a suit by a former San Francisco Police Cadet who refused to complete a polygraph examination, was ordered to take it, refused, and was dismissed.

In accordance with their policy, the Police Department requested the examination because of the cadet's failure to list required information on his application, in this case, an accident. The screening test, however, covered a whole range of topics, not just the accident and one other item in question. Plaintiff claimed the other examination questions invaded his right of privacy, and his termination denied him due process. Defendants (City of San Francisco, Major Alioto) stated that all of the questions were related to a job requiring a high standard of behavior, and that Plaintiff's overall veracity had been put in doubt by his answers on his application.

Judge Oliver J. Carter found for the defendants, concluding that "the polygraph examination is a proper method of investigation which does not infringe either plaintiff's right to privacy or his right to equal protection."

U.S. v. Demma, 523 F.2d 981 (1975)

In prosecution for conspiracy to import and distribute heroin, the appellate court said that the trial court "did not abuse its discretion in refusing to admit polygraphic evidence on the ground that it was not adequately exculpatory because probative force of evidence was seriously

be admitted into evidence." The trial court did, in its discretion, decide to admit the results of the test into evidence, which showed the subject was deceptive in his answers.

The Appellate Court of Illinois, Fifth District, reversed the decision in spite of the provision in the stipulation that the written report would be admitted. The appellate court was not convinced of the qualifications of the examiner and did not know of the conditions under which the test was administered.

Coursey v. Board of Fire and Police Commissioners of the Village of Skokie, et al., 90 Ill.App.2d 31, 234 N.E.2d 339 (1967)

This was an action to review the discharge of a police officer. One of the reasons for his discharge was his refusal to take a polygraph examination in connection with his alleged misconduct. The officer claimed the Board's actions were arbitrary, capricious and contrary to the manifest weight of the evidence. The trial court affirmed the Board's decision and he appealed.

The Appellate Court of Illinois, First District, Third Division, held in regard to the charge of insubordination in not taking the polygraph examination (which was argued more extensively than all of the other points and involved the filing of amici curiae briefs) that "the authority of a police chief under proper circumstances to issue such an order, like any other sound and reasonable order for the good of the service, is inherent in his position. The court said that in the circumstances of this case it was not arbitrary, and the constitutional issue of self-incrimination was not raised by the defendant nor is at issue. The citizens of Skokie were entitled to assurance that the Village's police force was above reproach." A successful test would have vindicated the department and exonerated the officer, "for in the public mind the result of such a test is often conclusive." The Court said that the proposed test was neither useless nor unreasonable. The order dismissing the officer was affirmed.

People v. Shelton, 42 Ill.2d 490, 248 N.E.2d 65 (1969)

Defendant, convicted of arson, sought postconviction review, claiming his constitutional rights were violated when he confessed during a polygraph examination. He claimed the confession was contrary to Miranda and Escobedo.

Defendant was one of several boys seen in the vicinity of a fire and they all agreed to take polygraph tests. Just before the examination began, Shelton blurted out his guilt. There were no police or fire officials present and the examination was never given. Not error said the court, as he was given adequate warnings before he made subsequent incriminating statements to the fire marshal, and neither of the statements were used in the conviction.

Louisiana

Roux v. New Orleans Police Department, 223 So.2d 905 (1969), cert. denied 397 U.S. 1008

The issue before the Court of Appeals of Louisiana was whether the action of the Civil Service Commission in affirming a policeman's dismissal from the New Orleans Police Department was proper. The Court held that it was. The Police Department was investigating circumstances surrounding a homicide in which it was learned that the victim was acquainted with a number of police officers. The policemen were requested to submit to a polygraph test in order to verify statements which were made in the course of the investigation. The appellant refused, and was dismissed from the Department.

Clayton v. New Orleans Police Department, 236 So.2d 548 (1970)

The appellants were policemen who were dismissed from their positions for refusal to submit to a polygraph test in an intra-departmental investigation. At no time were they requested to waive immunity from prosecution even though they were advised that they were suspects, and they gave no such waiver. The dismissals were based on the conclusion that their refusals to take the test were in violation of the departmental rules and regulations which provided, in part, that the police officer should conduct himself in accordance with a high degree of morality and act in a manner which would not reflect discredit upon himself or the Department; he should obey instructions from a superior source; and cooperate with other officers in the performance of their duties. The Court, citing Roux v. New Orleans Police Department held that the dismissal was proper.

State v. Corbin, 285 So.2d 234 (1973), rehearing denied

Defendant was convicted of distributing LSD and he appealed.

The defense counsel called for the Court to appoint a polygraph examiner to test all the witnesses of both the state and the defense and to supply the jury with the results of the tests. The state's attorney readily agreed to this stipulation but the Court declined to permit the procedure for lack of authority in the law. Defendant appealed, claiming the trial court erred.

The Supreme Court of Louisiana held that although there is no specific authority on the question, the fact that the Court held that such examinations are inadmissible when offered by either party, and without personal stipulations by the witnesses to subject themselves to the tests, the trial judge acted properly. The Court added, moreover, there was no showing on the reliability and accuracy of the tests. The Court said there was no merit in the appeal, and the sentence was affirmed.

State v. Rowe, 468 P.2d 1000 (1970)

Prior to trial, the defendant requested a polygraph examination. The examination was given although there was no stipulation concerning admissibility of the results. The report of the test results was inconclusive. Before trial the defendant informed the court of his intention to make known to the jury his offer to take the test, contending that his offer to submit to the test was the best evidence of his credibility and established his innocence.

On appeal from the trial court's pre-trial ruling excluding the evidence of his offer to take the polygraph test, the defendant asserted that "his offer of proof did not go to the results of the test but only to establish his willingness to take the polygraph test in order to show a state of mind, a consciousness of innocence." The Washington Supreme Court rejected this argument and held: "Since it is generally held that polygraph tests are not judicially acceptable ... it is obvious that a defendant should not be permitted to introduce evidence of his professed willingness to take such a test."

Seattle Police Officers Guild v. City of Seattle, 494 P.2d 485 (1972)

The Supreme Court of Washington was presented with the issue of whether the Police Department's efforts to elicit under threat of dismissal, answers from police officers to questions relating to the performance of their official duties violated the constitutional rights of a police officer against self-incrimination. The Court held that it did not.

The Court stated "if, in the exercise of prudent judgment, the investigating authority determines it reasonably necessary to utilize the polygraph examination as an investigatory tool to test the dependability of prior answers of suspected officers to question specifically, narrowly and directly related to the performance of their official duties, then, such investigating authority may properly request such officers to submit to a polygraph test under pain of dismissal for refusal."

After reviewing related decisions, the Court also found that there is "in these opinions a procedural formula whereby public officials may now be discharged for refusing to divulge to appropriate authorities information pertaining to faithful performance of their office."

State v. Ross, 497 P.2d 1343 (1972), 11 CrL 2333

The defendant, defense counsel and prosecuting attorney entered into a stipulation providing that the defendant would submit to a polygraph examination the results of which would be admissible in evidence. At trial the polygraph examiner testified without objection to his training and experience and concerning the conditions under which the polygraph test was administered. On appeal, the defendant argued that it was error to admit the results of the polygraph test.

other men at the time of conception was a vital statement.

The respondent then offered the results of the pretrial examination and statements into evidence, and it was received. The court observed, "The court and all concerned, were fully aware of the fact that lie detector results have never been allowed in evidence before in courts of this state." The examiner appeared in court, gave his qualifications, explained the operation of the instrument, said the instrument was not infallible but he had been proven wrong in only 20 cases of 15,000. The examiner tested her on the truthfulness of her pretest admissions. He asked her, with her agreement:

"Did you have sexual relations, with ... in August of 1969?"

Answer: "yes"

"Did you have sexual relations with others in August of 1969?"

Answer: "yes"

"Is it possible another man is the father?"

Answer: "yes"

The examiner also testified that after the polygraph examination she admitted to having had sexual intercourse with another man three times during the critical period. The examiner stated that in his opinion, petitioner was telling the truth during her examination.

The court, in accepting the evidence, wrote about the problems in finding the truth in paternity cases and the value of the lie detector evidence, and about the examiner, "a neutral party, his aim, like that of the court, is the same - a search for truth."

V Dolan v. Kelly, Supreme Court of Suffolk County, 348 N.Y.Supp.2d 478 (1973)

The court upheld the dismissal of a police officer, Dolan, who refused to submit to a polygraph test. The court ruled that a police officer who is not required to waive immunity can be dismissed from the force for refusing to take a lie detector test in matters related to the performance of his duties.

The officer was said to have caused three postponements of the test before bringing suit to avoid it on the grounds that his rights under the Federal and State Constitutions would be violated and his career unfairly jeopardized because such tests were in his view "notoriously inaccurate."

In this case the officer was to be tested on whether or not he saw his partner pocket money from the clothing of someone who had died. The officer under suspicion was said to have taken an examination and was found deceptive.

In regard to the officer's Fifth Amendment privilege against self incrimination, the court said it "is not at bar to dismissal of a police

officer who refuses to answer questions specifically, directly and narrowly relating to the performance of his official duties when he is not required to waive immunity with respect to the use of his answers in a subsequent criminal proceeding." The court said that if a public employee refuses to testify ... "he may be discharged for insubordination."

The petition by officer Dolan was dismissed.

People v. Wilson, 78 Misc.2d 469 (1974)

The defendant, one of several employees routinely given a polygraph examination following an outbreak of arson at his place of employment, and despite several Miranda warnings and his signing of consent waivers, tried to suppress his subsequent inculpatory statements. Judge Alexander Vitale examined the entire record to determine whether coercion existed. That court had previously decided in People v. Zimmer, 68 Misc. 2d 1067 that coercion did exist destroying the validity of the confession because the defendant was mentally deranged, the subject was wrongfully told that the polygraph results could be used in evidence, the examiner's techniques were unorthodox and the examination was excessively long. The facts in Wilson were not at all like Zimmer, and the record showed that the technique was proper, the warnings were readily understood, and there was nothing coercive about the examination. Wilson confessed to the examiner when confronted with the examiner's opinion of the results, and subsequently confessed to the detectives. The motion to suppress was denied.

People v. White, Buffalo City Court, Docket No. 1B-39905, February 20, 1975

The Court permitted the Defense to introduce into evidence the testimony of the Chief polygraph examiner for the City of Buffalo. Apparently, the prosecution did not object to the interrogation but did cross-examine the polygraph examiner on the theory of the test, but not the conclusion. The examiner concluded that the subject was not deceptive in his answers to the allegations. Based upon that testimony the Court dismissed the charges.

People v. Prado, 365 N.Y.S.2d 943 (Sup.Ct. Bronx City, 1975)

A stipulation in a homicide case provided for three possibilities. If inconclusive, no mention of the case was to be made at trial. If truthful, the assistant district attorney would recommend dismissal; and if not truthful, or if the defendant made any admissions, the results would be admissible. The examination was conducted by an examiner employed by th e prosecutor's office, and the results were truthful, but the prosecution did not ask for dismissal. Thereupon, the defense counsel moved for dismissal, a motion opposed by the prosecution. The judge held that the agreement was binding and dismissal was ordered.

Opinion of the Attorney General of Maryland, September 2, 1975

The Secretary of the Department of Public Safety and Correctional Services wrote to the Attorney General of Maryland and asked: "Does the Commissioner of Corrections have the authority to require correctional personnel to take a polygraph test as a part of an investigation in the institution to determine the possible involvement of said personnel in suspected illegal or illicit activities?"

After a lengthy review of cases involving law enforcement officers throughout the country and the details of Maryland law and rules, the Attorney General of Maryland replied in the affirmative, and said the Commissioner has the authority.

For a full text of the opinion, see "Correctional Personnel may be Polygraphed in Maryland: Opinion of the Attorney General," by Francis B. Burch, Attorney General of Maryland and Henry J. Frankel, Assistant Attorney General, in Polygraph 5 (2)(June 1976): 156-162.

Smith v. State, 31 Md.App. 106 (1976)

John Henry Smith was indicted and convicted for murder and arson, after the burning of a bar and restaurant in which two teen-age girls died in the fire.

On appeal, Smith's attorney said that tests on the Psychological Stress Evaluator (which purports to be able to detect truth and deception from stress in the voice) indicated that Smith was not deceptive in his responses when he said he had not set fire to the establishment and did not know who did. However, the trial court refused to bring the results before the jury.

The Psychological Stress Evaluator should be treated as no better than the standard polygraph, said the Court of Special Appeals. "The difference, if any, between the psychological stress evaluation test and a lie detector test is too minor and shadowy to justify a departure" from previous rulings. "A lie detector test by any other name is still a lie detector test," said the court. For precedent the court cited Rawlings v. State, 7 Md.App. 611, 256 A.2d 704 (1969) and a decision by the Supreme Court of New Hampshire in State v. LaForest, 207 A.2d 429 (1965).

Johnson v. State, Maryland Court of Appeals (1977)

The reversal of the conviction for rape of Van Gregory Johnson, and the order of a new trial, set a paradoxical precedent for the prosecution and the bench. Barring stipulation, an examiner testifying to the confession or inculpatory statement has, in the past, scrupulously avoided mentioning the polygraph examination. There is a considerable body of opinions relating to whether or not the mention of a polygraph examination is reversible error.

EXHIBIT B

CITY OF HENDERSON
DEPARTMENT OF PUBLIC SAFETY
243 WATER STREET
HENDERSON, NEVADA 89015

DIRECTOR 702/565-8921
FIRE DIV. 702/565-9275
POLICE DIV. 702/565-8933

Gateway to Lake Mead Resorts

R. G. ANSELMO
Director

January 19, 1979

AB 40

The Honorable Nash Sena
Nevada Assembly
Legislative Building
Capitol Complex
Carson City, Nevada 89710

Dear Assemblyman Sena,

Assemblyman James Banner and Assemblyman Michael Malone recently introduced Assembly Bill 40 pertaining to the so called "Police Officers' Bill of Rights". It is my understanding that this bill has been referred to the Judiciary Committee for hearings.

I would like to voice my opposition to this bill which, by the way, has been the subject of negotiations among police agencies within the state of Nevada for some time. I do not believe the police officers have been treated as "second class citizens" regarding their rights, particularly when they are the subject of an internal investigation of the appropriateness of their activities. Police personnel by the very nature of their awesome authority have a significant power over the majority of the population and, therefore, must be subject to a closer scrutiny of their activities, particularly when they are acting under the color of the authority they possess.

One of the propositions in the Police Officers' Bill of Rights is that he must be informed in advance as to who the officer in charge of the investigation will be, as well as who the officer or officers who will interrogate him will be. This right is not even possessed by the average citizen when confronted by the police authority. The Police Officers' Bill of Rights as presented affords an accused police officer far more protection than that afforded to members of the public. An example is the proposal that a furnished copy of the interrogation must be presented to the officer where there is no right to that particular request by an accused citizen.

EXHIBIT B

There are many cases of complaints where police officers' activities are subject to question and the only witnesses available are the person accusing the officer and the officer himself. In these instances, it would be appropriate, if the charge was serious enough, to request the officer in question to submit to a polygraph examination to determine the honesty of the statements being made. In the proposed bill, the officer could not be ordered to submit to a polygraph regardless of what the complaining party agreed to.

It is my belief that police officers require no greater protection than that afforded under the United States Constitution to any other citizen. The Police Officers' Bill of Rights, if enacted, would in fact provide greater protection than is warranted given the power that police officers possess.

I do not believe that it would be in the best interests of the citizens of this state to enact a statute of this nature. Therefore, I solicit your support in defeating this bill. I assure you of my cooperation at all times.

Sincerely,

Robert G. Anselmo
Director of Public Safety

RGA/pd

EXHIBIT C

ASSEMBLY JUDICIAL COMMITTEE HEARING - AB40

BY

ROBERT G. ANSELMO, DIRECTOR OF PUBLIC SAFETY
CITY OF HENDERSON
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LADIES AND GENTLEMEN:

IN FEBRUARY, 1967, THE PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE IN THEIR REPORT ENTITLED THE CHALLENGE OF CRIME IN A FREE SOCIETY STATED, "THERE IS NO PROFESSION WHOSE MEMBERS ARE MORE FREQUENTLY TEMPTED TO MISBEHAVE OR PROVIDED MORE OPPORTUNITIES TO SUCCUMB TO TEMPTATION THAN LAW ENFORCEMENT".

MY PURPOSE IN BEING HERE TODAY IS NOT TO QUESTION THE INTEGRITY OF LAW ENFORCEMENT OFFICERS WITHIN THE STATE OF NEVADA, FOR IN MY JUDGEMENT THEY ARE THE FINEST IN THE LAND. I AM, HOWEVER, CONCERNED THAT AN ISSUE THAT HAS BEEN NEGOTIATED IN SOME JURISDICTIONS IS NOW BEING CONSIDERED AS A STATUTORY REQUIREMENT. WITH THE PROLIFERATION OF PUBLIC EMPLOYEE UNIONISM, THERE HAS BEEN AN INCREASED DEMAND FOR EMPLOYMENT SECURITY AND JOB PROTECTION THROUGHOUT THE NATION. IN 1977, THE INTERNATIONAL CITY MANAGEMENT ASSOCIATION IN THEIR TEXT LOCAL GOVERNMENT POLICE MANAGEMENT STATED IN PART, "BECAUSE OF THEIR CONCERN FOR THE RIGHTS OF MEMBERS, POLICE UNIONS HAVE ATTEMPTED TO HAVE THE POLICE OFFICERS' BILL OF RIGHTS INCLUDED IN CONTRACTS. THE POLICE OFFICERS' BILL OF RIGHTS PROVIDES PROTECTION TO THE EMPLOYEE INVOLVED IN AN INTERNAL INVESTIGATION AND COVERS SUCH MATTERS AS TIME, PLACE AND THE LENGTH

OF INTERROGATION, THE USE OF COERSION DURING THE INVESTIGATION, AND THE RIGHT TO REFUSE TO ANSWER QUESTIONS. WHILE SOME OF THE RIGHTS ARE REASONABLE, OTHER RIGHTS LIMIT THE POLICE ADMINISTRATOR'S ABILITY TO CONDUCT AN EFFICIENT DISCIPLINARY INVESTIGATION."

IN MY JUDGEMENT AB40, IF ENACTED, WILL PROVIDE POLICE PERSONNEL WITH PROTECTIONS FAR EXCEEDING THOSE OF CITIZENS SUSPECTED OF CRIMINAL OFFENSES. IN ADDITION, IT PROVIDES GREATER PROTECTION FOR POLICE PERSONNEL REGARDING THEIR ASSETS THAN ARE AVAILABLE TO ELECTED AND APPOINTED OFFICIALS OF THE STATE. WHILE I WOULD AGREE THAT POLICE PERSONNEL SHOULD BE PROTECTED FROM ADMINISTRATIVE ABUSE, I BELIEVE THAT THOSE PROTECTIONS SHOULD BE ADMINISTRATIVELY PROVIDED AT THE LOCAL LEVEL AND/OR NEGOTIATED THROUGH THE COLLECTIVE BARGAINING PROCESS AS PROVIDED BY NRS 288. IF THE POLICE OFFICERS' BILL OF RIGHTS AS PROPOSED WERE STATUTORILY REQUIRED, IT WOULD REMOVE MANAGEMENT'S CAPABILITY TO EXERCISE THEIR RESPONSIBILITIES IN MEETING THE SERVICE NEEDS OF THE PUBLIC.

POLICE OFFICERS ARE DIFFERENT FROM OTHER CITIZENS, IN THAT THEY HAVE AWESOME POWERS TO DISRUPT THE LIVES OF PEOPLE, EITHER THROUGH THEIR ACTIVITY OR INACTIVITY. POLICE OFFICERS HAVE THE POWER OF ARREST, THE POWER TO USE DEADLY FORCE IN THE EXECUTION OF THEIR FUNCTIONS, AND THE RESPONSIBILITY FOR THE WELFARE AND SAFETY OF THE COMMUNITIES THEY SERVE. IN VIEW OF THE POWERS DELEGATED TO THE POLICE, I BELIEVE THAT GOVERNMENT HAS A RESPONSIBILITY TO INSURE THAT POLICE PERSONNEL ARE ABOVE REPROACH.

I WOULD LIKE TO AGAIN QUOTE FROM THE CHALLENGE OF CRIME IN A FREE SOCIETY AS FOLLOWS: "IN ONE IMPORTANT RESPECT, THE ISSUE IS NOT HOW MANY DISHONEST OR BRUTAL OFFICERS THERE ARE, BUT WHETHER

THERE ARE ANY AT ALL. A SMALL NUMBER OF SUCH OFFICERS CAN DESTROY CONFIDENCE IN THE POLICE, CONFIDENCE THAT TAKES MANY YEARS TO REBUILD, EVEN WHEN MISBEHAVIOR HAS BEEN PROMPTLY WEEDED OUT. MOREOVER, EVEN A SMALL AMOUNT OF MISCONDUCT CAN UNDERMINE THE MORALE AND DISCIPLINE OF A DEPARTMENT. CLIQUES CAN GROW UP THAT THRIVE ON SECRECY AND RESIST REFORM. WELL-BEHAVED OFFICERS BECOME CORRUPT BY THE MORES OF THEIR ENVIRONMENT, ESPECIALLY BY THE UNSPOKEN RULE THAT OFTEN PREVAILS IN SUCH SITUATIONS: AN OFFICER MUST NOT 'INFORM' ON HIS COLLEAGUES -- AND OF COURSE, LAW ENFORCEMENT SUFFERS. A POLICE DEPARTMENT WITH A REPUTATION FOR UNFAIRNESS CANNOT PROMOTE JUSTICE. A POLICE DEPARTMENT WITH A REPUTATION FOR DISHONESTY CANNOT COMBAT CRIME EFFECTIVELY."

IF WE ARE TO INSURE THAT AN INVESTIGATION INTO THE ALLEGED MISCONDUCT OF AN OFFICER IS COMPLETE, THEN WE MUST USE ALL OF THE INVESTIGATIVE TOOLS AVAILABLE TO US. WE MUST INSURE THE TRUST AND INTEGRITY OF OUR SWORN POLICE PERSONNEL AT ALL COSTS. POLICE PERSONNEL, BY THEIR TRAINING AND EXPERIENCE, SHOULD BE FAR BETTER PREPARED TO PROTECT THEIR RIGHTS THAN THE AVERAGE CITIZEN. IT IS INCONCEIVABLE TO ME THAT WE WOULD STATUTORILY LIMIT THE NUMBER OF INTERROGATORS DURING AN ADMINISTRATIVE INVESTIGATION WHILE ALLOWING UNLIMITED INTERROGATORS TO QUESTION A CITIZEN SUSPECTED OF A CRIMINAL VIOLATION. IT IS ALSO INCONSISTENT TO REQUIRE THAT THE STATUS OF OFFICERS IN CHARGE, THEIR TITLES AND NAMES, AS WELL AS THE NAMES OF ALL OTHER PERSONS PRESENT DURING AN INTERROGATION MUST BE PROVIDED TO A POLICE OFFICER BEING QUESTIONED; AND YET WE DO NOT GIVE THAT PRIVILEGE TO A CITIZEN. WHILE AN ADMINISTRATIVE INVESTIGATION INTO A POLICE OFFICER'S CONDUCT COULD HAVE A SIGNIFICANT IMPACT UPON HIS

OR HER ECONOMIC STATUS, THE CITIZEN IS SUBJECT TO AN ECONOMIC LOSS ALSO, BUT MORE IMPORTANTLY THE POTENTIAL LOSS OF FREEDOM.

I AM ALSO CONFUSED AS TO WHY POLICE PERSONNEL WOULD BE CONCERNED REGARDING THE SEARCH OF THEIR LOCKER OR SPACE FOR STORAGE, SINCE THAT SPACE IS IN REALITY THE PROPERTY OF THE COMMUNITIES THEY SERVE AND, THEREFORE, NOT THE OFFICERS' PERSONAL PROPERTY, BUT MERELY CITY PROPERTY MADE AVAILABLE FOR THEIR USE. THIS PARTICULAR ISSUE HAS BEEN DECIDED IN A COURT OF LAW IN THE CASE PEOPLE v TIDWELL, 266 N.E. 2D 787 (ILL. 1971) WHICH FOUND "DEPARTMENTAL PROPERTY USED BY THE OFFICERS SUCH AS LOCKERS, VEHICLES, DESKS, ETC., MAY BE SEARCHED WITHOUT WARRANT". IF A JUDICIAL REVIEW OF THIS PARTICULAR ISSUE FINDS NO IMPROPRIETY, IS IT THEN IN THE BEST INTERESTS OF THE PEOPLE OF THE STATE OF NEVADA TO STATUTORILY RESTRICT IT?

LADIES AND GENTLEMEN, I BELIEVE THAT THIS PIECE OF LEGISLATION, WHILE HAVING SOME MERIT IN CERTAIN INSTANCES, IS NOT REALLY JUSTIFIED. INAPPROPRIATE CONDUCT OF ADMINISTRATIVE INVESTIGATIONS ARE SUBJECT TO REVIEW BY LOCAL CIVIL SERVICE COMMISSIONS, THE LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT RELATIONS BOARD, AND ULTIMATELY THE COURTS. ALL OF THESE REMEDIES ARE AVAILABLE UNDER THE EXISTING LAWS, AND I DO NOT BELIEVE THAT IT IS APPROPRIATE TO CREATE FURTHER LEGISLATION IN THIS AREA.

I WOULD LIKE TO AGAIN STATE THAT I HAVE THE HIGHEST RESPECT FOR THOSE WHO HAVE CHOSEN LAW ENFORCEMENT AS THEIR CAREER. I AM PROUD TO WEAR THE BADGE OF A PEACE OFFICER AND BELIEVE IT IS MY DUTY, AS WELL AS MY DESIRE, TO INSURE THAT THAT BADGE REMAINS UNTARNISHED.

I BEG YOU NOT TO PUT ROADBLOCKS IN THE WAY OF OUR EFFORTS TO SEEK OUT AND REMOVE THOSE MINUTE FEW WHO CHOOSE TO DISHONOR THEIR BADGES OF OFFICE AND THE PROFESSION THEY CLAIM TO SERVE.

THANK YOU FOR THE OPPORTUNITY TO HAVE APPEARED BEFORE YOU.

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3. International City Management Association: Local Government Police Management. Washington, 1977.

4. National Advisory Commission on Criminal Justice Standards and Goals. Police. Government Printing Office, Washington, 1973.

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