MEMBERS PRESENT: Chairman Stewart
Vice Chairman Sader
Mr. Thompson
Ms. Foley
Mr. Beyer
Mr. Price
Mr. Chaney
Mr. Malone
Mrs. Cafferata
Ms. Ham
Mr. Banner

MEMBERS ABSENT: None

GUESTS PRESENT: William Engel, Military Department
Mike Melner, American Civil Liberties Union
Norman Glaser, State Senator
Vern Calhoun, Dept. of Law Enforcement Assistance
Michael de la Torre, Dept. of Law Enforcement Assistance
Tom Warburton
Frank Enriquez
Bob Shriver, NV Trial Lawyers Association
D. B. Small, Carson City District Attorney
Bruce Laxalt, Washoe County District Attorney
Brooke Nielsen, Attorney General - Criminal Division
Morris Lind
Joseph Cronin, NV Trial Lawyers Association
Robert Manley, Attorney General's Office
Norm Herring, State Public Defender
C. Woodyard, LV Sun

Chairman Stewart called the meeting to order at 8:05 a.m. He stated that because Senator Glaser wished to speak on SB 221 and had appointments pending, the Committee would hear his bill first.

SB 221: Repeals exemption of telegraph and telephone company employees from militia and jury duty.

Senator Glaser explained that this law is obsolete and therefore should be repealed from the statutes. He noted that he could see the need, in time past, to exempt these individuals from militia and jury duty, but this is no longer necessary. Hence, SB 221, in a sense, is a clean-up bill.

Willima Engel, representing the State Military Department, also testified on this bill. He said the present law could affect

the National Guard during periods when it is called to State active duty by the Governor, at which point it becomes, by definition, the State militia. He further noted that, currently, members of the Guard who are also employees of the telephone company could be exempt from duty in the Guard at a time of State emergency, when they would be most needed. Thus, he recommended the law be repealed.

As there was no further testimony on this bill, Chairman Stewart closed the public hearing on it.

Mr. Thompson moved DO PASS SB 221, seconded by Mrs. Cafferata, and passed unanimously, with Mr. Chaney, Mr. Malone and Mr. Price absent at the time of the vote.

AB 240: Provides for use of foreign standard of "felony" in defining certain offenses for purposes of registration of convicted felons.

Mike Melner of the American Civil Liberties Union (ACLU) testified in support of this bill. Mr. Melner explained that the current law is unfair in that it uses Nevada laws and standards for registration requirements for felons. Thus, even though a crime for which an individual is convicted in another State is not a felony there, if it is a felony in Nevada the individual must register here as a convicted felon. Mr. Melner pointed out that in such cases, the individual may not even know the crime is a felony in Nevada, and since he is not actually a convicted felon, he may not realize he is in violation of the law by not registering.

Mr. Melner questioned the language contained on page 1, line 9 regarding an offense "punishable" as a felony, because it may not have actually been punished as a felony where the conviction took place. He said that while the ACLU favored AB 240, this wording should be changed as it could present problems in the future.

Several other aspects were raised concerning this bill by the Committee members. Mr. Stewart wondered what happens in the case of a State which does not classify its crimes as Nevada does; e.g., a Class I crime as opposed to a felony. Mr. Melton was not sure how this would be dealt with, and offered to research how many States use differing classifications.

Mr. Price noted that under the current law a person convicted, for example, of possession of marijuana in California is simply fined there, but the same individual would have to register as a felon in Nevada; he further noted that his being a registered felon in Nevada would become part of his permanent record. Mr. Price also pointed out that this works in the reverse: under the proposed amendment, an individual convicted in "any place other than Nevada" of a felony must register, even if the crime is not a felony here; e.g., a political prisoner from

somewhere. Mr. Sader added that this would even hold true for an individual who had been convicted of a felony in connection with gambling or prostitution, activities which are legal in Nevada, but felonies in most other States.

As there was no further testimony on this bill, Chairman Stewart closed the public hearing and appointed a subcommittee to review those problem areas cited: Mr. Sader, chairman; Mr. Malone and Mr. Price.

A final notation was made concerning this bill: the felon registration lists a) the place of conviction; b) the nature of the crime; and c) the punishment imposed.

AB 234: Provides alternative to grand jury proceedings.

Mr. David Small, Carson City District Attorney, testified first; he noted he was also representing the District Attorney Association on this particular bill.

Mr. Small stated AB 234 represents a tool which will be most useful to those jurisdictions which do not routinely have Grand Juries. He added this bill is not an attempt to replace Grand Juries, but is an information gathering tool. Its main purpose is not to initiate a process leading to a conviction as much as to be a proceeding parallel to the inquest proceeding.

Mr. Small explained that this process is used in many other States, along with Grand Juries. He said AB 234 parallels the Idaho statute.

Mr. Small pointed out that AB 234 anticipates the presence of an attorney, who would act more as a coach than as a participant. He said that, except for perjury and/or refreshing memory, this will not provide a substitute testimony for some later proceeding in that there will be no cross examination available.

Mr. Small stated he felt this tool to be very important for all the counties, and essential for those counties that do not have and cannot afford full-time Grand Juries. He noted that those counties, to the best of his recollection, which do have full-time Grand Juries are Clark, Carson and Humboldt; the other 14 counties do not have them routinely.

In reply to Mr. Sader it was explained that this bill would allow the District Attorney to place an individual under oath and to question him, under a formal setting containing a reporter and a magistrate, without having to arrest someone first and then trying to sort out the facts. In other words, this bill gives the District Attorney a chance to get the information necessary to sort out the accusations prior to a formal proceeding and/or arrest. Additionally, this bill provides protection for the District Attorney as well as for the individual: for the District Attorney in those instances when there are no

criminal charges pending, and for the individual who will not be arrested simply on the basis of rumor and/or gossip. AB 234 allows the District Attorney to sort out the facts prior to making an official move.

Mr. Small explained to Mr. Malone that the District Attorney petitions to a District Judge for a hearing. If the Judge rules in favor of a hearing, he appoints a magistrate (a Justice of the Peace) to oversee the hearing. This magistrate does not actually participate in the hearing, but acts more as a referee, keeping things in line, etc. Mr. Small noted that this Justice of the Peace is disqualified from the next step in the process; i.e., the preliminary hearing. He said that in those instances where a District only has one Justice of the Peace, some areas arrange quasi contracts with a neighboring area to allow their magistrates to sit in the stead of a disqualified magistrate.

Mr. Price expressed concern at this point that AB 234 might be giving too much power to the District Attorney, allowing him to call people in for questioning without there being any charges filed nor any type of formal proceeding. This, he said, could open the way for harassment.

Mr. Small pointed out to Mr. Price that this bill does provide protection from the possibility of harassment in that it requires a two-step process: 1) the initial filing of application by the District Attorney to the District Judge to authorize the proceeding in the first place, and 2) the conducting of the proceeding itself before a second Judge.

Mr. Bruce Laxalt, Washoe County District Attorney's Office, testified next in support of the bill. Mr. Laxalt explained that, while the Grand Jury system works very well in Washoe County, this bill will be helpful to the smaller counties which do not routinely have Grand Juries sitting. He further stated that he felt the Grand Jury system to be preferable to that system described in AB 234 because it is better insulated from political misuse.

Mr. Laxalt said there is a need for a vehicle (either the one outlined in this bill or the Grand Jury) to investigate in certain cases. He then cited several examples.

Next Mr. Laxalt agreed with Mr. Price that this bill places a great deal of authority in one man, and could thus cause problems. He pointed out that there was only one individual involved, the magistrate, and that it is much easier to pressure and/or influence one man than it is seventeen men on a Grand Jury.

Mr. Laxalt summarized his testimony by stating his office supports this bill, especially for the smaller counties. He urged the Committee, however, to be wary of any attempts to

use this bill as a substitute for the actual Grand Jury.

Mr. Price then questioned why all counties do not have standing Grand Juries. Upon learning the cost factor is the main reason, he asked if it would be possible to appoint a small panel of, for example, seven individuals; this panel would act like a Grand Jury, thus reducing the possibility of influence, and would be less costly due to the smaller number.

Mr. Laxalt was not sure the number of people involved would have a major effect upon the cost, as there would still be a need for a court reporter, a facility, etc. The fee paid the Jurors would be a minor expense.

Mr. Laxalt explained to Ms. Foley that even if a county has a regularly standing Grand Jury, they can still use the procedure described in AB 234; it is up to the discretion of the District Attorney.

Ms. Foley questioned section 5 of the bill, regarding the involvement of one county in proceedings concerning corruption in another county. Mr. Laxalt said that legally, every office in the State has the power to prosecute a crime occurring in the State and after an indictment is rendered it is only a question of venue; thus, in actuality this power already exists.

In reply to Ms. Ham, it was explained that this bill does not appear to go beyond the normal duties of a Justice of the Peace.

Next to testify was Mr. Robert Manley, of the Attorney General's Office. He noted that the Grand Jury system also has its problems, albeit tried and true. He noted that in those smaller counties which do not have Grand Juries available all the time, should the District Judge have some kind of a problem, a Grand Jury would have to be called. This process can take up to four months.

Mr. Manley suggested a remedy for the entire situation would be to require a Grand Jury be impaneled in all counties at all times. He went on to explain that this would not be prohibitively expensive if the Grand Jury were impaneled, went through its good government functions (which it must do every few years and which takes circa nine months), and then left impaneled and available rather than disbanded. This would not cost anything unless the Grand Jury was actually meeting.

Mr. Manley went on to note that as far as the Attorney General's Office was concerned, Mr. Price's suggestion of a seven-member "mini-panel" was worth looking into. He added he did not think the number of individuals on the Grand Jury was stipulated in the Constitution, thus it would only require a statutory change.

Mr. Manley pointed out that the Attorney General can only get into a situation in the first instance either by request of the District Attorney and the approval of the County Commissioners by resolution, or, if there is a Grand Jury involved.

Mr. Beyer asked how long it would take to call a Grand Jury if one was needed. Mr. Manley explained that if there is no Grand Jury impaneled, then it could take as long as four months by the time one was impaneled. If there is a standing Grand Jury, then the District Attorney can request the foreman call the Jury immediately. It should be noted, however, that the foreman is independent of the District Attorney, and can opt not to call the Jury together. However, he can also have them gathered within hours, if necessary.

Mr. Vern Calhoun, Chief of the Division of Investigations and Narcotics in the Department of Law Enforcement Assistance, testified next. Mr. Calhoun explained his office had requested this bill because they felt there was a definite need for this type of tool.

Mr. Calhoun went on to explain how this legislation resulted. The original plan was to form a State Grand Jury, which could be used by the Attorney General in any of the counties, whether or not that county had a Grand Jury impaneled. There was insufficient support for this proposal, however. Therefore, the methods used by other states for handling this situation were looked at, and the Idaho statute was finally used as the model for AB 234. He stressed this process was to be used as an alternative to, not a substitute for a Grand Jury, and that it was an investigative tool to be used in increasing the effectiveness of law enforcement agencies.

Mr. Calhoun replied to Mr. Price that the only time one county can use another county's Grand Jury is when there is a connection between the two counties regarding the crime. He also said he had no objection to Mr. Price's earlier suggestion of a mini-panel or Grand Jury.

Mr. Stewart then pointed out that this process does not grant the power of indictment, and therefore there would still be some problems involved in those counties with no Grand Jury.

Mrs. Cafferata asked if it would be possible to mandate that there be continuous Grand Juries in every county. Mr. Calhoun said this would be ideal, but the fiscal impact of this must be considered. He added that the cost would include such things as paying the Jurors, the subpoenas for the witnesses, for those appearing before the court, etc.

Mr. Joseph Cronin testified next in opposition to this bill. He felt the intent of the bill was good, but that, as written, the bill is ambiguous.

Mr. Cronin felt the process described in AB 234 should be amended so that it would replace the Grand Jury as "inquisitor".

Next Mr. Cronin outlined those portions of the bill which he felt were ambiguous and/or could cause problems:

a) The bill appears to call for an open proceeding, however it also contains a prohibition on disclosure;

b) The bill grants right to counsel, and after a grant of immunity the witness may leave the room to consult with counsel, but there is no indication that counsel must leave the room. Mr. Cronin said he felt the right to counsel should extend beyond the grant of immunity.

Mr. Cronin went on to say that he did not feel this bill would be as beneficial to law enforcement agencies as earlier indicated, because there is no provision for indictment in AB 234, and eventually there would have to be a preliminary hearing, etc. Thus, there would really be no savings involved.

In reply to Mr. Stewart, Mr. Cronin said he did believe an attorney should be fully present in any proceeding of this nature and that this was essential in any inquisitorial process. He did not feel it necessary to allow the attorney to call witnesses, etc., but just that he be there to advise his client.

Mr. Norm Herring, State Public Defender, testified next. He said he was concerned about Section 7 of this bill, which states the individual has the right to an attorney during these proceedings. He wondered if this would have any impact upon the State Public Defender's Office. Mr. Stewart said he did not foresee any impact on the Public Defender's Office because they are required to supply an attorney only in the case of an accusation. Since there is no accusation in the process described in AB 234, there is no impact on this office.

Mr. Herring said he would like to have this specified both in the bill and in NRS 177.188 concerning the appointment of the Public Defender for indigents.

Mr. Herring also questioned the benefit of preserving the testimony of individuals appearing before this type of proceeding, since, because it has not been subjected to cross examination, it is inadmissable in any further proceedings.

He also noted that this is not really going to preserve manpower, since it will require the presence of individuals who must testify, magistrates to hear this testimony, etc. He further noted that testimony from the proceedings will be sealed and will not be for public dissemination; he wondered if he, as an attorney, would have access to, or even be aware of, this material.

Finally, Mr. Herring questioned whether this information would be of any benefit in a preliminary hearing, since presentation of probable cause in a hearing or before a Grand Jury would still be required, and this in addition to what has already been done during the investigatory proceeding.

Mr. Herring stated he felt law enforcement agencies already have the capability of providing investigatory processes during a criminal investigation, and that they don't really need this process.

Mr. Herring said he wished to note that it has been his experience that, when necessary, a Grand Jury can be impaneled in much less than four months, and he cited one instance where it only took two weeks to do this.

Mr. Stewart wondered if this type of measure would be of any value in combatting organized crime and/or white collar crime where cheating, etc. might be involved and there is a need for certain documents to which the District Attorney does not have access? Mr. Herring said this was a possibility, and that the federal government in its RICO investigations frequently uses this to uncover syndicate and/or white collar crime. He added that the RICO statutes have also come under a great deal of criticism.

Mr. Sader then asked those District Attorneys present if the proposed legislation would be acceptable to them if it were amended to only apply to counties which do not have sitting Grand Juries. Mr. Small said this amendment would be agreeable to the Carson City District Attorney. He wondered, however, about Mr. Laxalt's earlier comments that Cal Dunlap would like to have this procedure in addition to the Grand Jury. He noted this could be useful in those instances where the District Attorney is not ready to go to a Grand Jury for indictment, but there is reason to preserve certain testimony. He felt, however, that if this were the only alternative, it would also be acceptable to Mr. Dunlap.

Mr. Small then said he would like to add a few comments to his earlier testimony. He explained that, if as a result of the investigation an accusatory process is begun, the testimony by a witness would be available to that witness.

Another point was that he knew of an instance where it took approximately six weeks to impanel an emergency Grand Jury in Carson City.

Finally, he said that Grand Juries have a tendency, once impaneled, to be self-propagating; i.e., they keep finding things they feel should be investigated and therefore there is very often a much larger fiscal impact upon the impaneling of a Grand Jury than was originally estimated because they keep extending the session, and thus their expenses.

At this point Mr. Price re-initiated the discussion concerning the possibility of abuse of this power and harassment by the District Attorney. Mr. Small explained what he felt to be the safeguards built into AB 234.

Mr. Manley then came forward to provide additional information on his previous testimony: he noted that Grand Juries do have the authority now to divide into smaller groups (panels) for the good government aspect of their duties. He was not sure, however, that the power to form a subcommittee in order to receive testimony currently existed. He also pointed out that it would only require a statutory change rather than a constitutional change, in his opinion, to allow for a sub-committee of a Grand Jury to be called for the purpose cited earlier by Mr. Price.

Mr. Beyer then stated that, according to the statutes, every county of 15,000 people or more must seat a Grand Jury... at least once every four years.

Mr. Manley suggested the possibility of requiring each county to have a Grand Jury impaneled full time; requiring the good government duties be fulfilled only once every four years unless there were some outstanding reason to cover this more often; changing the Jurors every two years, so that no individual would be under the stress of being "on call" for four years straight; and noting that when not fulfilling their good government function these Grand Juries would not meet unless requested to do so or for some outstanding reason.

Finally, Mr. Herring came forward to point out that although a witness would have access to his own earlier testimony, this bill did not indicate that the testimony of the other individuals would also be available. He felt this could be of utmost importance in a preliminary hearing or during an actual trial.

Chairman Stewart closed the hearing on AB 234 and appointed a subcommittee to look into this matter further: Ms. Foley, chairman; Mrs. Cafferata and Ms. Ham.

AB 204: Empowers attorney general to subpoena documents.

Chairman Stewart told the Committee that in discussions with the Attorney General it had been requested that AB 204 also be amended by removing subsection (c) on page 2.

Next Chairman Stewart said he had two bill requests, both from Mr. Bunker and the Gaming Control Board. One prohibits more than one licensed operation at a single establishment. He said that in Mr. Bunker's opinion there would be more effective regulation of some establishments if, instead of having a gaming license and a racebook license, there just be one license. The other bill is to clarify requirements to exclude or eject undesirables. He said this is a black book and needs to be clarified.

Mr. Malone moved that both of the above bill be introduced by the Committee, seconded by Ms. Foley, and passed unanimously with Mr. Thompson, Mr. Banner and Mr. Chaney absent at the time of the vote. Chairman Stewart noted for the record that these two proposed bills were BDR 41753* and BDR 41985.**

As there was no further business the meeting adjourned at 9:45 a.m.

Respectfully submitted,

Pamela B. Sleeper

Pamela B. Sleeper
Assembly Attache

*AB 342
**AB 341

61st NEVADA LEGISLATURE
ASSEMBLY JUDICIARY COMMITTEE
LEGISLATION ACTION

DATE: Friday, 13 March 1981

SUBJECT: SB 221: Repeals exemption of telegraph and telephone company employees from militia and jury duty.

MOTION:

DO PASS XX AMEND ___ INDEFINITELY POSTPONE ___
RECONSIDER ___

MOVED BY: MR. THOMPSON SECONDED BY: MRS. CAFFERATA

AMENDMENT:

MOVED BY: _____ SECONDED BY: _____

AMENDMENT:

MOVED BY: _____ SECONDED BY: _____

	MOTION		AMEND		AMEND	
VOTE:	YES	NO	YES	NO	YES	NO
Thompson	X					
Foley	X					
Beyer	X					
Price	ABSENT					
Sader	X					
Stewart	X					
Chaney	ABSENT					
Malone	ABSENT					
Cafferata	X					
Ham	X					
Banner	X					
TALLY:	8	0				

ORIGINAL MOTION: Passed XX Defeated _____ Withdrawn _____

AMENDED & PASSED _____ AMENDED & DEFEATED _____

AMENDED & PASSED _____ AMENDED & DEFEATED _____

ATTACHED TO MINUTES OF Assembly Judiciary Committee
Friday, 13 March 1981

61st NEVADA LEGISLATURE
ASSEMBLY JUDICIARY COMMITTEE
LEGISLATION ACTION

DATE: Friday, 13 March 1981

SUBJECT: Committee introduction of BDR-41753 and BDR- 41985.

MOTION:

DO PASS ___ AMEND ___ INDEFINITELY POSTPONE ___

RECONSIDER ___ DO INTRODUCE XX

MOVED BY: MR. MALONE SECONDED BY: MS. FOLEY

AMENDMENT:

MOVED BY: _____ SECONDED BY: _____

AMENDMENT:

MOVED BY: _____ SECONDED BY: _____

	MOTION		AMEND		AMEND	
VOTE:	YES	NO	YES	NO	YES	NO
Thompson	ABSENT					
Foley	X					
Beyer	X					
Price	X					
Sader	X					
Stewart	X					
Chaney	ABSENT					
Malone	X					
Cafferata	X					
Ham	X					
Banner	ABSENT					
TALLY:	8	0				

ORIGINAL MOTION: Passed XX Defeated _____ Withdrawn _____

AMENDED & PASSED _____ AMENDED & DEFEATED _____

AMENDED & PASSED _____ AMENDED & DEFEATED _____

ATTACHED TO MINUTES OF Assembly Judiciary Committee
Friday, 13 March 1981