

MINUTES OF MEETING-ASSEMBLY COMMITTEE ON JUDICIARY - 55th SESSION 200
CHAIRMAN ROY TORVINEN FEB. 20, 1969/-

Present: Schouweiler, Lowman, Kean, Bryan, Swackhammer, Fry and Reid.

Absent: Torvinen and Prince.

The meeting was called to order at 2:30 P.M. by Bart Schouweiler in the absence of Chairman Torvinen.

He announced that first on the agenda would be A.J.R. 16-which proposes to amend Nevada constitution by authorizing verdict in criminal cases upon concurrence of 10 members of jury.

Several people were present who wished to be heard on this proposal. Assemblyman Schouweiler said he would hear the proponents first, and later would call the opponents.

George E. Franklin, Jr., D.A., Clark County, Las Vegas, Nevada.

Mr. Franklin said he didn't know of a single case where the jury had brought in an 11 to 1 verdict where it caused any trouble. He said he knew of a case of a 10 to 2 for acquittal, where if the man hadn't been on trial for murder, he would have walked out the door!

In 1900, our forefathers in England in procedural law, went into a 3-year study and now it has a 10-2 verdict throughout the realm. England requires a unanimous verdict on a civil case and 10-2 on criminal.

More harm can be done in a civil case than in a criminal case. In a civil case, it can be won on a 9-3 verdict. "I'm not in favor of removing 'beyond a reasonable doubt'." He said there was a possibility of reducing the jury to an 8-man jury.

"I frankly urge the adoption of this rule", (the 10-2 verdict). "It has the support of the National District Attorneys Association and the State District Attorney's Association of the State of Nevada".

Fry: "George, could you explain the provisions at the end of the Resolution?"

Reid: "As I understand it, you wouldn't have to take the constitutional amendment at this time."

Against A.J.R. 16 -

James Santini, Public Defender, Clark County, Las Vegas, Nevada.

He said he did not agree with the National District Attorneys Association. He said his objection was two-fold. First of all, the U.S. Supreme Court in 1900 said, where they had an 8-man jury verdict, and the verdict was up to the U.S. Supreme Court, "this is a dangerous concept, to tamper with our jury system and of a man's right of trial by jury."

The second consideration, he said, was the fact that there is absolutely no need for fooling around with our Courts on this thing. "From every criminal case I have worked on, it has been born out that there have been "hung juries" involving 10-2 situations. In my mind, I would lose 10 million dollars before I would spend ten days in jail. I'd hate to start junking the constitution to make it convenient for the prosecution."

He said Louisiana permits less than a majority verdict in criminal cases. Oregon is 10-2 except for the death penalty, then they require the 12-man. Utah requires an 8-man unanimous decision, except in cases of the death penalty, then they require 12-man."

Reid: "Could I ask the Public Defender a question? Don't you think some of the benefits of the lesser jury would be not in the re-trial, but because of the hard time the State has in convincing the 12 people?"

Santini: "I don't think so, and I think the statistics in Clark County will bear me out. There were only 4 cases of hung juries in the past 3 years."

Swackhammer: "I understand in the basic concept of a criminal case, you have to convince the jury beyond a reasonable doubt. What if you have one unreasonable man?"

Santini: "It is unreasonable to expect you will not find one unreasonable man. That man is brought into influence by the other 11 people. You will find there wasn't a "hung jury", but usually there were 4 people that were in the minority to start with".

Franklin: Said that the very first thing the defense attorney does is concentrate on the weakest link in the jury box. He said it is a lot harder to bribe 12 jurors than one, and it is a lot harder to get 3 instructions than one.

Santini: "I don't remember one case I have tried when I looked for that one man.

Mr. Schouweiler introduced Mr. McDonald from the Legislative Counsel Bureau.

He said he had looked for hours and just assumed it was in the code - the right of the criminal to a jury trial. He said "this is the source - that it applied to civil juries. "You have a right to 9 out of 12 in a civil case.

He recommended if there is any doubt, the committee look at the debate of why they stayed with 12.

Fry: "That is the source of our unanimous jury".

McDonald: "Everyone in California just assumes that this common law jury applies".

Franklin: "We recommend that it be a Constitutional Amendment".

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Bryan: "And others lie like hell to stay off!"

Schouweiler: Asked if there was much of the irresponsible juror? For instance, he said, "a female juror was telling me about it. There was no question the guy was guilty. They didn't like the looks of the guy against him, so they turned him loose".

Santini: "You have a much more substantial position to carry if you are going to throw out the Constitutional and extradite prosecutions. It is a difficult concept. I don't see any need for it."

Franklin: "A Constitutional Amendment isn't a horror in my eyes. It isn't for the purpose of making it convenient for the prosecution. We are prosecuting anyway, and we are getting convictions anyway. It makes a difference in criminal justice, and a lot of difference to the taxpayers".

Lowman MOVED DO PASS A.J.R. 16.

Kean SECONDED.

Reid: I'm not sure that I am philosophically committed to amending the Constitution as the District Attorney suggested. However, the argument is quite persuasive. We are still 3 years away from the Constitution being changed, and I don't see what harm it would do to vote in favor of it at this time".

Kean: "Are you talking about a 12-man jury:

Reid: "I am talking about a 12-man jury."

Swackhammer: "We know crime is increasing liability. We have been told by both defense and the State that it doesn't make any difference".

Fry: Said he thought they were talking about a situation in Clark County and that the jury system in Washoe County was different than that in Clark County. "I cite you a case in this morning's paper. You just don't get anything less than death in a capital case in Washoe County. I have seen discussions come out where there has been merely a guilty verdict, and the discussion has been merely life or death". ----- "They haven't used the gas chamber for so long, they have to test it and bring it up to snuff" (intimating that it will soon be used again). "I am opposed to it in a capital case. In criminal law, there is always a question of reasonable doubt." He said it takes 12 men to decide on this. He said his experience in the legislature has been brief; "however, over the year or two that I have been here, when we get a resolution passed, it has been my experience that the first thing people say is, 'don't worry about it. We can do something about it the second time around', but I have seen just the opposite thing happen."

Reid: "Are you opposed to the Amendment on the basis that it is going to hurt the defendant more than the State?"

Santini: "I don't believe it would prejudice the defendant any more than it would prejudice the State".

Reid: "Do you think we have better guidelines if it isn't passed this year, and it comes back to the committee next year? I don't know whether you want to go through the whole formal proceeding without the benefit of that experience, or should we go ahead and amend the Constitution?"

"In the next two years they are going to go ahead with this Resolution to amend the Constitution. If they come out now and say you don't have to, do you have to start all over again with a new piece of legislation?"

Franklin: "There is always the horror of the death penalty. Maybe it would be more palatable if you put in, "except in capital cases".

Schouweiler: "The same as Louisiana?"

Franklin: "Should it be for the District Attorneys to decide, or should it be for the people to determine to be constitutional?"

Assemblyman Bryan said that crime seems to be on the uprise in our State, as well as across the Nation, and he felt that the proposal to change juries to 10-2 was based on a false premise. He said he feared this would lead to attempting to make it a simple majority of 7 to 5.

Mr. Franklin said he was talking about money and time. "It doesn't effect the substantial criminal justice rights of the defendant in any event. The juries don't create crime. If you have an 11-1, and the one guy has been bought off, it just costs the taxpayers \$25,000 to start over again".

Bryan: "What is the statistical occurrence of jurors being bought off?"

Franklin: "I've had one since I've been District Attorney. This came from the defense attorney himself". "We do get that incalscent juror who just won't vote. One juror had seen a Perry Mason case the night before and she wasn't going to vote any man guilty at any time!"

Bryan: "Couldn't we attack that problem better by increasing the number of peremptory challenges?"

Franklin: "You know some jurors lie like hell to stay on".

Fry (continued) Also, he said, the D.A. and the Public Defender told us they had no objection to including in here the 10-2 verdict, except in a death case, where it shall take a unanimous verdict. If that is making us worry, then we should change it because the District Attorney doesn't care".

Bryan: "If I were satisfied in my own mind that this would ease the crime problem, I would vote for it. I don't think we should tinker with the whole system to solve the isolated instances which occur. The D.A.'s group represent one point of view, but they don't represent the general public. This is a special group. I think anybody who proposes a constitutional amendment must carry the burden of proof".

Lowman: "If Mr. Bryan will permit me, the two people here, if I understood them, tell me they did not testify here that it was going to solve our criminal point of view, but testified that it would save money. But I also disagree with you that it should prevent us from any action. We do not use our common sense. At the same time, if you think as normal common run-of-the mill individuals who have been sent to represent the people of the State of Nevada, if we can save money or help to make better sense out of our crime problems in Nevada, then it is up to us to act on that feeling. Philosophically, of course, you and I are probably on opposite sides of the fence on this, but I think if we are going to do what we are sent up here to do, we have to act in light of what we have, and as human beings with common sense".

Reid: "We had Jim Santini and George Franklin tell us that this doesn't make either of their jobs easier. Maybe these two people don't really believe what they are saying. If it isn't going to make any difference in convicting people, if it will save the State of Nevada a lot of money, I think George is more persuasive when we are not talking about rights of individuals, as to whether we are going to violate a tradition or save money and time."

Bryan: "Are you concerned that we are tampering with the jury system".

Reid: Said he wears the same suit to prosecute a civil case where he has a 9-2 verdict and when he goes out a different door and across a different street to prosecute a criminal case where he has to get a hung jury .

Fry: Disagreed that a civil case is worse than a criminal case. He said in a bankruptcy case, for instance, the defendant can recover in a certain length of time, but "when you take away a man's life, you are taking away everything he has forever".

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Lowman: "I will amend my motion to exempt capital cases."

Bryan: "In good conscience, I can't vote for this bill."

Kean: "I would vote 'no' in any case."

Schouweiler called for the question. 3 votes for, 4 against.
Motion denied.

Swackhammer said people abhor a police state. "We have got ourselves in such a state that the police and other law abiding forces can't do their jobs in an effective manner".

Lowman: "I withdraw the whole thing (the motion and Amendment) and start over with an amendment."

Kean: "I move that we allow the slate to be wiped clean, and start all over."

Seconded by Lowman. Unanimously carried.

Lowman: "I move DO PASS to this legislation, and amend to except capital cases."

Reid: "I move the Resolution be amended to except capital punishment."

Kean Seconded.

Unanimously carried.

Schouweiler: DO PASS as amended.

Question? 4 voted for and 3 against.

Bryan requested parliamentary ruling.

Fry: "Minority ruling".

NOTE: The committee rules provide that a majority of the entire committee of 5 members is required to pass out a bill. Assemblyman Schouweiler therefore announced the bill, A.J.R. 16, would remain in Committee for further study and consideration.

S.J.R. 7 - Proposes to amend Nevada constitution by advancing deadline for filing initiative petitions to amend the constitution.

Secretary of State John Koontz: We amended the Constitution by the initiative petition at one time. We had at that time some pretty sticky labor problems, and we were all spooked. We found by the initiative petition, a person could enact an initiative or get it signed and it goes right on the next election ballot. It short circuited the amending process by about 4 years. Now a person has to get the initiative signed in the manner that all others are signed, and he

shows it on the next Secretary of State's list, and it has to pass the next general election. It passes the vote of the people twice. The only thing this will do is change the date in the Secretary of State's Department of from 60 to 90 days. This will give him time to check the names. It will give him an additional 30 days.

"I put that bill in for those reasons. By Constitutional Amendment, as proposed in either the Senate or Assembly, it requires 90 days before the election to send it to the County Clerks in pamphlet form for printing on the ballots and publishing in the paper. If someone comes in with initiative petitions to amend, I have only 30 days to prepare these. We want to coordinate these two dates to 90 days before our legislative constitutional amendment and consider that goes on the ballot in August. Under this initiative part of this thing, they can come in with initiative petitions in our 1970 Supreme Court. The thought we had was to put them up 90 days on the initiative the same as the constitutional amendments. Then I can certify them at the same time."

Fry: "Is your requirement to furnish this statutorily? Would there be any benefit to making this statutory rather than constitutional? In other words, make it 60 days rather than 90 days?"

Koontz: "This deals with initiative petitions. This initiative holds here in full. If we had the other section on this constitutional amendment, it might be that the constitution itself requires that it be. It would be better if we could defer this until tomorrow, and I will research it a little bit. I know we moved it up to jibe with the legislative amendments and with the Legislature. I am not sure whether this carries a constitutional or statutory provision. Anyway, it falls in the last week in August. One of them has to be moved 30 days one way or the other. It would be preferable for both myself and the county clerks to move it up to 90 days".

Reid: "It isn't by Statute. It must be in the Constitution".

Koontz: "It is definitely the last week in August, which is 90 days. The two provisions conflict. I have talked it over with McDonald. I will try to find the provisions on the last week in August".

"We have seen a fantastic growth in Clark County, which has been coming for quite a while. We are a little spooked by it. Through the initiative petition was the only way we felt we could get reapportionment".

Mr. Koontz came back into the committee hearing room with NRS 293.253 wherein there is statutory language requiring the Secretary of State to provide a copy of the constitutional proposals to county clerks and the public on the first Monday of August of the election year just approximately 90 days before the election.

Reid: DO PASS (S.J.R. 7)

Kean: Seconded. Unanimously carried.

A.B. 132 - Authorizes publication of name of juvenile offender who commits subsequent felony. -

Schouweiler: "A.B. 132 is on the Chief Clerk's desk, and it has been reported out. Mel Close and I are behind it, but we want to see what the Committee thinks of it before we bring it out."

He referred to Line 12, Page 2 of the bill, the material in italics. "Nor shall the name or race of any such child in connection with any proceedings under this chapter be published in any newspaper without a written order of the court".

No action was taken.

A.B. 190 - Repeals certain provisions relating to dismissal of actions.

Reid said there had already been a DO PASS motion on A.B. 190 and it was on the Chief Clerk's desk. Reid, re A.B. 190 "I move DO PASS".

Bryan seconded. Unanimously carried.

A.B. 339 - Fry: This makes it mandatory for the Sheriff return a Writ to the clerk of the court where the judgment was entered and gives him a time period for doing it.

Fry moved DO PASS.

Reid Seconded. Unanimously carried.

A.B. 344 - Authorizes judgment of acquittal in criminal cases.

Schouweiler: I imagine we have some other District Attorney bills. This is a defense attorney bill, and they should be heard.

S.B. 83 - Swackhammer: "There is no use fooling around with this. We aren't going to have Justice Courts much longer."

Lowman: "S.B. 83 to 86 are some of the issues that we are hearing."

Reid: "You know they aren't going to open Municipal Courts on Sunday".

Fry: "I'd like to know what's behind this."

Swackhammer "I'll have Senator Monroe or Senator Dodge come over and talk to us".

A.B. 153 -- deferred for further counsel.

A.B. 175 - Prescribes certain procedures relative to motion for change of venue in criminal actions.

Bryan: Lyon County has a murder case in which a man was killed in Reno and transported to Lyon County for burial. Before any vote was actually made to query them voir dire as to their bias, the Judge granted change of venue. As the trial would cost in excess of \$50,000 and would be a definite hardship on this county, they introduced an appropriation bill to help defray expenses. What Mr. Dini wishes to do is at least query the voir dire panel before changing venues.

Reid: Made reference to Line 10, words, "difficult or impossible"

Fry: Said he thought this was locking the barn door after the horse had been stolen. "This is legislation that was created by a very poor prosecutor in Lyon County, and a Judge that didn't want to hear the case."

Reid: Suggested no change of venue be granted until an attempt has been made to select a jury.

Fry: Said he thought the D.A. was in error for not bring a Writ of Prohibition.

No action taken.

A.B. 245 - Reid said there was another bill coming out which was very similar.

Schouweiler said A.B. 245 would be held in committee until the other bill could be read.

A.B. 338 - Fry recommended holding until tomorrow, as another similar bill was coming out.

Meeting was adjourned until 2:30 P.M. Monday, February 24th.