

MINUTES OF MEETING - ASSEMBLY COMMITTEE ON JUDICIARY, 55th Session <sup>2-</sup>119  
March 17, 1969

Meeting was called to order at 3:00 P.M. by Chairman Torvinen.

PRESENT: Torvinen, Reid, Kean, Swackhamer, Prince, Lowman, Schouweiler  
Fry, Bryan.

ABSENT: None.

MR. TORVINEN: This is the time set for a hearing on AB 553, AB 554, AB 573, AB 524, AB 525, AB 526, AB 527, AB 528 and SB 227. We have present three district attorneys, William Raggio, Washoe County, Robert List, Ormsby County, and George Franklin, Clark County. We appreciate these people coming here and giving us the benefit of their ideas and experiences. Since they have to go into a Senate Hearing, also, we will ask them first to speak generally, rather than specifically.

MR. RAGGIO: I would like to speak for my position with reference to all of the bills that are to be considered today. I find nothing objectionable as a whole.

524 is the expungement bill which restores citizenship, or rather makes it unnecessary for citizenship to be restored because in some cases this will be taken care of by the State Board of Pardons, etc. Probation might have problems with this provision.

SB 227 would double the penalties on crimes where the person was carrying a gun. I think this is a very healthy approach. We had asked for legislation to make it a separate offense but this is better. The law should consider possession of a firearm while committing an offense. The purpose is to deter the use or disposition of the firearm.

AB 525 I will leave to the probation department for comment. AB 526 would waive the presentence investigation. I am a little concerned about 527. I am not sure what the purpose is. I can't see any need for concealment from either State or defense of the Probation recommendation.

I have no objection to 528. Our county follows this practice today. It requires a statement of facts from the district attorney to go with the recommendation. We find it very helpful with the parole application.

AB 553 is the stop and frisk statute. I may have been partly responsible for this. This is almost the model statute suggested and adopted in other jurisdictions. It may be misunderstood, judging from articles I have seen in the papers. It is designed to follow in the footsteps of Terry vs. Ohio, which held as unconstitutional the stop and frisk law. If we are to draw a distinction and make it clear where we are going to stand and draw the line between illegal action and doing nothing this is where we do it. This is now being considered by almost all the state legislatures. New York has adopted it. It would set a reasonable guideline for law enforcement people to follow.

A cop sees a man standing in a dark alley under suspicious circumstances. Most people think the police should do something but without the stop and frisk law he can do nothing. This takes the guesswork out.

MR. SWACKHAMER: How many states have enacted the stop and frisk law? 2-12

MR. RAGGIO: New York has. Most of the other states are considering it.

MR. FRANKLIN: In the State vs. Laughton, which was a year ahead of the U.S. Supreme Court decision, upheld the stop and frisk.

MR. RAGGIO: It says you can hold for fifteen minutes. I would like to be able to hold longer.

AB 554 is the wire taping law. I am opposed to improper wire taping and eavesdropping procedures, but this bill is also a model law deemed necessary to bring the state statute in line with Federal provisions that deal with wire taping. It puts what we already had in proper constitutional language. It is exactly the same for penalties as the Federal law.

This is necessary, because our law now is unconstitutional in view of the U.S. Supreme Court decision.

MR. KEAN: Why is it unconstitutional?

MR. RAGGIO: It doesn't provide for the type of application which is deemed necessary. It doesn't contain the amount of information which the U.S. Supreme Court has said is necessary for due process. It requires more information to get a court order to intercept.

AB 573 is the credit card crime act and it is a good approach I think. The misuse of credit cards has become a multiple million dollar business. I could suggest no changes to this proposed law. It is very comprehensive and good.

MR. TORVINEN: It is a model Act, so to speak. It was prepared by the American Express Company and some other companies by their counsel. It has been adopted by about 12 states so far.

MR. RAGGIO: I wish to restate my objections to SB 227. I have given them in detail before.

MR. LIST: An example of a situation which SB 227 would not cover is where a man is caught in the process of a burglary with a gun in his pocket, which he has not used. The amendments suggested by Bill Raggio would discourage this and that is what we want to do.

AB 228: This was the law at one time. It was taken out in 1967 by AB 81, the Criminal Procedures Bill. I would urge that 228 be adopted.

AB 524: Mr. Franklin has a good suggestion on this and I will defer to him.

I would urge enactment of the credit card crime bill, AB 573.

MR. FRANKLIN: I would urge the adoption of 553. It has been upheld.

in 524, concerning the language in which citizenship has been restored: A felony does not take away citizenship so that language should be changed to say what it means, "restoration of civil rights." The word "citizenship" should really be changed, line 20.

2-121

I am opposed to waiving the pre-sentence investigation. In almost every case this should be required, under our determinate sentencing. You should demand it, even though the offense is nonprobationable. I oppose this bill, AB 526.

I disagree with Mr. Raggio on 527. I don't think the investigation should be disclosed before the sentence. You can get this information from mothers, brothers and sisters. This is just letting the boy know that his mother finked on him.

I favor the recommendations. I don't think it should be known in advance whether he is or isn't going to get probation. He has pled guilty, but when he finds he is not going to get probation he will go back and ask for the whole works, the preliminary and everything. He has nothing to lose.

I think recommendation should not be disclosed.

AB 528: There are many facts surrounding an offense that we cannot get into a court of law. Many times a man is up for parole and he is faced with facts that some rule has kept from the jury previously. I just don't like that "comments from the district attorney that he sees fit."

MR. SCHOUWEILER: I do not agree. I would have some sort of statement.

MR. FRANKLIN: There should be a recommendation in every case but he should not be allowed to comment. We have so many convictions which do not come into the record. Could cause much litigation.

SB 227: Where the sentence was not more than 20 years, etc. You double the minimum time in each event. But in Nevada we have possibility of parole in 1 year in any event. You haven't penalized him one bit for using a gun. Use should be a substantive bill. The idea is to punish the users of guns. Unless you want to step up these penalties, this is not good law.

AB 573, the credit card Act is an excellent Act. No matter who prepared it, it is a good Act. This may be special legislation, but they are willing to pay the expenses.

I don't believe the wire-tapping Act is unconstitutional. However, we should add to it. We should have no statute which might give the impression that they can commit a violation of law to apprehend a criminal. I don't think the Legislature should ever authorize a law which could cause another law to be broken.

I can guarantee whatever this Act is, our telephone company will not allow any more wire tapping. They right now have suits for several millions of dollars. I tried to get a permit on a double murder case in a trailer and I couldn't get it.

MR. TORVINEN: Is the fly-casting technique still used? Would that be breaking and entering?

MR. FRANKLIN: Yes, breaking the square. I have told the FBI that they had better not break the laws of Nevada in their search for criminals for the Federal.

The FBI hired one of our best burglars to burgle one of our homes in order to place a "bug." It was still the intent to commit a crime. Another time they had a professional burglar steal a man's briefcase in order to get evidence. They have practically destroyed wire tapping as evidence anyway.

MR. KEAN: George, refresh my memory back to 1957. Didn't we have some problems in Las Vegas with law enforcement officers "bugging" each other and so on?

MR. FRANKLIN: Yes. The district attorney was calling for the grand jury to indict the sheriff and vice versa. There were so many bugs in the district attorney's office that he had to have a switchboard to take all the recordings. There were 57 outlets on the switchboard down in the old blue room in the jail.

One thing I want to call to your attention and that is a bill for the relief of Lyon County. Their case was transferred to Clark County, change of venue, and my estimate of the first trial alone is \$28,000 and the recording fee will be \$5,000. This is going to be a pretty fantastic affair. There are 16 jurors to feed three meals a day and to house. By the time we finish the bill will be well over \$50,000. That whole thing just amazed me.

MR. TORVINEN: Maybe we should ask about a couple of other bills we got after this hearing was set up. One prohibits public defender from interviewing prisoners until they have been declared indigent, AB 639.

MR. FRANKLIN: I would like to contest the indigence of some of these people. We had one man who made seven trips to San Francisco, accompanied by a girl, during the course of the trial. He had been declared indigent. We had a man at the Air Base making \$190 a month, but he couldn't pay for an attorney. There should be a chance for some kind of a hearing beforehand.

MR. BRYAN: How about a statute giving you some way to do this?

MR. FRANKLIN: We never get or send affidavits.

MR. TORVINEN: We have a bill somewhere now that allows the Justice of the Peace to appoint counsel.

MR. FRANKLIN: Sometimes there are two defendants and the public defender could not act for both of them so counsel would have to be appointed. I don't know whether the Justice of the Peace could commit the county for the payment of fees if the defense counsel were appointed.

MR. TORVINEN: That question has been raised. How does the District Judge do it now?

MR. FRANKLIN: There is no budget available in the Justice of the Peace for payment of the private counsel.

MR. RAGGIO: I remember writing a letter on this. I was disturbed about the oral application. I felt it should be a written affidavit and become a matter of record.

MR. TORVINEN: Mr. Fry introduced a bill yesterday which takes the \$300

lid off. It is the Stanley Brown bill. If we consider that one, we should consider some ceiling.

MR. RAGGIO: There is nothing wrong in principle. The question is how much can you afford?

MR. FRANKLIN: I was appointed to one once where the cost was \$8,000 of my own money in addition to what was allowed.

MR. RAGGIO: They did turn Stanley Brown down. There should be some kind of limitation. There was something like \$11,000 in that case. It could get to the point where you would not have the money, especially in a small county. It could happen there, too. There is a bill making this cost to the counties.

MR. FRY: They should be in conjunction.

MR. RAGGIO: I wonder if any action has been taken on any action taken by the Attorney General.

MR. TORVINEN: We have had you all here four times already.

MR. FRANKLIN: We are not complaining.

MR. TORVINEN: AB 640 is concerning the statement made to the jury about life without possibility of parole.

MR. RAGGIO: I wrote a letter on this bill indicating I approved it. I think this is proper instruction. This is something we already do by way of summation, explaining what these sentences really mean.

MR. REID: Would you look at AJR 40 in conjunction with this bill?

MR. RAGGIO: I think they read together. If you pass the other one you don't need this. It says life with no possibility of parole and means what it says. We have had several sentences commuted. At least we should go to the extent of 640.

MR. FRY: You should either have that instruction or make it mean what it says.

MR. RAGGIO: If there is the possibility of parole, they, the jury, should have that knowledge. When the jury sends him to prison without possibility of parole, they think that is what they are doing.

MR. FRY: If you want to leave it that way, then put it where they can read it and know what goes on. When the jury for Summers found it did not mean what it says they immediately gave the death sentence.

MR. HANNIFIN: Very seldom granted. When it is, it is news but the commuting is not common practice by a long shot. Commutations are very seldom entertained by the Board of Pardons.

MR. REID: How long have we had life without possibility of parole?

MR. RAGGIO: About eight years. The death sentence is also subject to executive clemency.



MR. LOWMAN: I would like to hear if 183 is any better than the other one. 2-124

MR. RAGGIO: I just got this amendment. This limits it to a crime against the person where the other was all felonies. This is a step in the right direction.

MR. TORVINEN: If you read the original section, there are things yet which do not fit. (read this.) It includes involuntary manslaughter and also some other unintentional crimes.

MR. FRY: We are including second felony as being the important one. What about the first?

MR. TORVINEN: With involuntary slaughter it is an unfair statute.

MR. LOWMAN: Can we spell these out?

MR. RAGGIO: You have to accept or reject the basic premise which is over-working of probation.

MR. FRY: I have had probation given to men who have had 7 felonies. It is usually just the first time he was caught, not really the first offense.

MR. TORVINEN: Maybe there is a good case for probation. Maybe the second offense did not include criminal intent. I appreciate what they are trying to do, but I don't know how to do it.

AB 641 states an appeal from an order suppressing evidence.

MR. FRY: You would never have a chance at some cases if not given the right to appeal.

MR. HANNIFIN: Apparently all the district attorneys agree on 525. We do have similar legislation regarding parole now. This is just to make the two sections compatible. "Citizenship" should be changed to "civil rights."

on 527 there was disagreement between Mr. Raggio and Mr. Franklin. Mr. Franklin likes it now and Mr. Raggio favors the new. I agree with Mr. Franklin for essentially his same reasons. If you are getting information from relatives you are creating a breach within a family situation which is the opposite of what you are trying to do.

MR. RAGGIO: Why don't they give the sources of recommendation to the State? I have never been able to understand that. It has always seemed ridiculous to me. It was always helpful to me to see the entire report. Now all we are getting is the facts we are giving the probation office.

MR. BRYAN: You have got the blind leading the blind. Which way is the axe going to fall?

MR. RAGGIO: I can agree about sources but I see nothing wrong with the State knowing.

MR. TORVINEN: After my client had been on probation in California and the offense I was defending was her third there was still no trouble guessing what the recommendation would be.

MR. HANNIFIN: We have to get this report now. All developments are putting the Department on a real spot. I would like to get this thing in or not in. Let's either tell or let's not tell. Let's not work in this gray area. We can work it either way.

MR. FRY: It sometimes takes 45 minutes of the court's time while we argue how the court is going to go.

MR. HANNIFIN: The court's time is not being wasted. It has had this in its hands before you ever got to court.

MR. BRYAN: The problem is this. You go in not knowing where the hell you stand. You can't tell which way the thing is going to go, so you pull out all the stops, you bring in the priest and his sister and you go all out. You can go on for 30 minutes and then the judge says he is going to recommend probation.

MR. HANNIFIN: I would agree with Mr. Bryan. Many times when this information is revealed previously to the defense, a previous pleading of "guilty" is withdrawn and he then goes into action.

MR. BRYAN: It takes a murder case to get this.

MR. HANNIFIN: The committee should either pass as it stands or pass for full disclosure for both sides by getting it out of the middle.

MR. FRY: I think we should take the language in italics and put it into the first paragraph.

MR. HANNIFIN: This bill originated out of the Public Defenders office problems.

On 526, Mr. Franklin would like a pre-sentence investigation in all cases. We, too, would like this in all cases. Each and every person who goes before that judge should have a pre-sentence report. We changed because we were afraid the judge would object.

MR. TORVINEN: What about the defendant who wants to waive his rights and be sentenced?

MR. HANNIFIN: First, how can we recommend without an investigation? Second, there are still further things he can do after sentencing. Then we don't have the information to go back to. You are maybe getting five years away from this information.

MR. TORVINEN: What about Mr. Fry's client who wants to plead guilty?

MR. RAGGIO: Having Fry's client plead guilty? This is really a hypothetical case.

MR. BRYAN: The State is interested in knowing what this individual's record really is.

MR. RAGGIO: We should never have adopted the determinate sentence. Maybe we should have a pre-sentence investigation. Maybe a judge does not want to hear a case on a particular day. Has been abused.

MR. HANNIFIN: We had the case where the attorney represented he had known the defendant for 25 years and this was proved not right.

MR. TORVINEN: What do we do with 526?

MR. HANNIFIN: Pass it with an amendment.

MR. RAGGIO: 176.135 contradicts 176.185, subsection 2. I have it here.

MR. TORVINEN: What you want us to do is to delete all italicized language in 526 and then add "unless the court no longer, etc?" Leave the brackets in.

MR. HANNIFIN: On 528 Mr. Franklin objected to this but I would say the Parole Board wants the comments from the district attorney whether they are admissible in a court of law or not. The Parole Board wants to know exactly the thinking of the district attorney about this guy. On them rests the responsibility of keeping the man in there or letting him out.

MR. RAGGIO: I thought the counties were still doing this. We still send in the form that used to be required and find it is helpful to us.

MR. HANNIFIN: You are the only county that is still doing this.

MR. RAGGIO: Then when we are asked to give a parole recommendation we are able to go back to this.

MR. FRY: I have had minor threats where if your guy doesn't plead guilty that I am going to really wreck him with parole. I don't know whether this really happens.

MR. RAGGIO: I am going to keep on with this practice unless you pass a law saying that I can't.

MR. HANNIFIN: I am going to go on seeking these statements whether or not you pass this.

MR. BRYAN: There should be some opportunity for a hearing to explain other circumstances.

MR. RAGGIO: I don't know about that. We might go into some detail about where it happened, age of lady, also other arrests for robbery and so on. There may be some things we do not really want to give out to someone else.

MR. FRY: I am really talking about the guy who hasn't been previously arrested but you have pretty good suspicions that he is in on other things that have been going on. I think he should have the right to controvert this.

MR. RAGGIO: The same thing is true then on confidential information on sources.

MR. BRYAN: There is a distinction between sources and the facts themselves.

MR. RAGGIO: I recall a case where someone at the prison was selling these reports to the prisoners so they all knew what we had been saying.

MR. REID: Unless abuse becomes very wide-spread, I would like to leave it as it is.



MR. HANNIFIN: You realize the problem of the Parole Board. We want to know what really was going on at the point where he was sent to prison.

MR. RAGGIO: This was the law before and they took it out because the district attorneys get peeved. They said the Parole doesn't follow our recommendations anyway, so why bother?

MR. BRYAN: I think it is a good idea, especially in case there is a mistake.

MR. RAGGIO: I don't want to open up another avenue of hearings for the defendant. He has too many already.

MR. HANNIFIN: I want you to know that our department wants all of the bills you have spoken of here today.

ROBERT MCADAM: I would like to back up Mr. Franklin. If we get a request now there is so much confusion we are afraid to comply with it for fear we will be prosecuted for wire tapping. We do get a few calls for this. It is an obsolete method now. Whatever action you take is fine with us. We just want it all to be very clear.

MR. TORVINEN: What if you get an order and you don't ask for cooperation. You just go out and do it.

MR. MCADAM: We could not do that. We don't even have the equipment.

MR. RAGGIO: This actually tightens up this law. It conforms to the Federal Law. This has all been pretty well clarified by Federal decisions and now by the State. If our law is made to conform with the Federal there would not be any question if it did come up.

MCADAM: I am in favor of AB 573. AB 434 which has to do with anonymous and or obscene telephone calls: To be effective, we have to have convictions. With a felony we feel there would be few convictions. We would suggest the committee consider making this a misdemeanor again so we can get convictions. When we get convictions we get publicity and it does do some good. We do have some experience to go on and we are in favor of this bill. Our only question is the penalty.

AT THIS POINT ALL VISITORS WERE EXCUSED. 4:25 P.M.

AB 554: Provides for electronic interception of communications.

MR. REID: I move we Indefinitely Postpone AB 554.

MR. BRYAN: I second the motion.

MR. TORVINEN: The district attorneys want it.

MR. REID: Franklin doesn't want it.

MR. TORVINEN: If the Federal people can wire tap, the district attorneys should be able to wire tap. I am talking about the Omnibus Crime Bill of 1968.

MR. REID: If anyone can show me where it is necessary, I will vote for it.

MR. SWACKHAMER: Can you prove it is harmful? I think Law Enforcement should have every possible tool we can give them.

MR. TORVINEN: The point I am trying to make is they don't ask the telephone company any more. They just put induction coils on the wire and don't tell anybody about it.

MR. REID: Look at all it asks for on this bill. It seems to me they could just tap on anything.

MR. FRY: It is broader than the way it is now. You have to put more down with this.

MR. BRYAN: Only one week ago the Supreme Court put down a decision on wire tapping, with more restrictions. This committee should look into that.

MR. TORVINEN: 200.660 limits the interception to murder, kidnapping, extortion, bribery, etc. It limits the crimes on which it can be used. If you can wire tap for narcotics you should be able to for dangerous drugs and if for extortion and kidnapping why not for robbery and other crimes?

MR. REID: This is not a ruse, but I think we should look into the new and complicated rules which went in the decision for wire tapping.

MR. SWACKHAMER: How long would it take?

MR. TORVINEN: In five minutes we could do it by calling the Law Library across the street.

MR. REID: I withdraw my motion to Indefinitely Postpone AB 554.

I make a new motion to refer this to the bill drafter and have him conform with the instructions in this Supreme Court Decision.

MR. KEAN: We are talking about the invasion of rights under our nation. You would be doing a tremendous thing. I don't think we have time in this session to study this properly. This is something for a later time when there is more time to concur.

I move we kill AB 554. It is an invasion of privacy and can be a terrible crime in itself.

MR. MCKISSICK: You had the most informed guy in the United States right here for your hearing. Mr. Hancock. He worked at Notre Dame for two years drafting the law. He is the foremost expert in the United States on the subject. He was Gezlin's law clerk.

He told me privately that when he first started working on this he was all in favor of the constitutional rights and invasion of privacy seemed important to him. And then he started hearing some of the records the FBI used to find members of the Mafia, etc. Then he went just the other way. Now he thinks Nevada is not ready for this. The Federal Law will take care of it.

MR. SWACKHAMER: There is a possibility that Mr. Kean is correct but

the criminal element makes a whole lot worse invasion of our privacy. We should make every effort to help law enforcement.

I second Mr. Reid's motion to refer to the bill drafter to conform.  
MOTION CARRIED UNANIMOUSLY.

MR. TORVINEN: Mr. Reid, will you take care of this for us?

MR. MCKISSICK: Mr. Hancock has a new article coming out in Law Review or something on this.

MR. PRINCE: I am like Mr. Swackhamer. I feel we should give Law Enforcement every possible tool to help them in their fight against crime.

AB 526: Requires court to obtain presentence investigation report before imposing sentences in criminal action.

MR. BRYAN: I move Do Pass AB 526 as amended by deleting italics and leaving the brackets in.

MR. SCHOUWEILER: I second the motion.

MOTION CARRIED UNANIMOUSLY.

AJR 40: Proposes to amend Nevada Constitution by prohibiting life sentence without possibility of parole.

MR. REID: I move Do Pass AJR 40.

MR. TORVINEN: Would you rather have that than to have the jury instructed

MR. REID: Yes. Definitely.

MR. TORVINEN: Is there another way there can be a commutation of sentence

MR. REID: He can be pardoned if new evidence comes up showing he is not guilty. Summers in Reno was given the death sentence because the jury found out there was a possibility of parole later. This would mean much more to our courts and would prevent some of these long, drawn-out death sentences.

MR. SWACKHAMER AND MR. PRINCE Seconded Mr. Reid's motion to Do Pass AJR 40 ON THE VOTE, THE MOTION FAILED WITH ONLY FOUR AYES. Mr. Fry and Mr. Bryan asked to be recorded as not voting.

MR. REID: We need AB 640 and AJR 40.

AB 524: Provides relief from convicted person registration requirements for persons whose citizenship has been restored.

MR. SCHOUWEILER: I move Do Pass AB 524 with amendment changing "citizenship" to "civil rights." Line 29.

MR. REID: I second the motion.  
MOTION CARRIED UNANIMOUSLY.

AB 525: Establishes periods during which probation violators may be held without warrant.

MR. BRYAN: I move to defer to another day. 2-1

MR. LOWMAN: For what purpose?

MR. BRYAN: 15 days seems to me to be an unreasonable period of time.

MR. TORVINEN: He is a probationer.

MR. BRYAN: He is entitled to a revocation hearing. I am not saying I am opposed.

MR. FRY: This is just to bring into conformity what we are already doing.

MR. TORVINEN: We will hold AB 525 until tomorrow.

AB 527: Provides for limited disclosure of presentence investigation report.

MR. REID: I move Do Pass AB 527 deleting section 2.

MR. FRY: I would amend Mr. Reid's motion.

MR. TORVINEN: Last sentence to read "sources of confidential information shall not be disclosed?"

MR. FRY: I would add a further amendment that the words commencing with "investigation" on line 5 and all of line 6 be put after words "recommendations," etc.

MR. BRYAN: And returning paragraph 2 "sources of confidential sources of information shall not be disclosed."

MR. SCHOUWEILER: Except for the word "shall".

MR. BRYAN: I want this to save the State time. If it is a fairly simple case you don't have to stand up and argue.

MOTION CARRIED UNANIMOUSLY.

AB 528: Requires statement from district attorney after rendition of conviction in felony case.

MR. REID: I move Do Pass AB 528.

MR. SCHOUWEILER: I would amend Mr. Reid's motion to strike line 13, starting at "and."

MR. BRYAN: Copy to be mailed to defendant prior to hearing.

MR. TORVINEN: You are not here dealing with a trial. We are talking about a Parole Hearing. The guy has been in jail for three years and the warden has made his report and the Parole Board calls in the prisoner.

MR. BRYAN: He is entitled to have counsel there if he wishes it. It would seem fair that a copy of this be sent.

MR. TORVINEN: If this is sent, then there should be a copy of the warden's report too.

MR. MCKISSICK: The report is that a lawyer at these hearings do more harm than good. When a lawyer is called, they open the books.

MR. SWACKHAMER: The warden should have some kind of information about the kind of guy he is getting.

MR. TORVINEN: I agree with that. The question is whether a copy should be sent to the defendant.

MR. BRYAN: I will amend the motion to provide that a copy to sent to the one appearing for parole.

MR. TORVINEN: The motion, then is to Do Pass AB 528 after changing the language in lines 13 and 14. All in favor.

MOTION CARRIED UNANIMOUSLY.

MR. BRYAN: I move that the bill be further amended to provide for a copy of the statement of facts be delivered to the district attorney by the State Board of Parole and be supplied to the prisoner before the hearing for the consideration of parole, say 10 days prior to that hearing.

MR. KEAN: I second the motion.

MR. FRY: I will vote NO because the district attorneys are going to hate it.

MR. KEAN: How can you say it isn't fair? What gives the district attorney the right to say something against the man who has no right to a rebuttal?

MR. BRYAN: We must be realistic. Here is a guy with minimal education confronted with the district attorney's report and he has no opportunity to defend himself. All he could do is say it's not true.

ON THE VOTE THE MOTION FAILED WITH ONLY KEAN, REID AND BRYAN VOTING AYE.

ON THE VOTE THE MOTION TO DO PASS AB 528 AS AMENDED CARRIED UNANIMOUSLY.

SB 227: Doubles penalty for using gun or deadly weapon in commission of crime.

MR. TORVINEN: Mr. Franklin suggested that this is accomplishing nothing.

MR. BRYAN: How would we ever explain our actions in not going along to fourteen Senators?

MR. TORVINEN: Mr. Franklin said it does not do anything because if the judge says 1 to 20 you still get parole at the same time as if he doesn't give you more than four years.

MR. KEAN: I move we Indefinitely Postpone SB 227.

MR. LOWMAN: I second the motion.

MOTION FAILED.

AB 573: Adopts Credit Card Crime Act.

MR. SCHOUWEILER: I move Do Pass AB 573.



MR. LOWMAN: I second the motion.  
MOTION CARRIED UNANIMOUSLY.

MR. KEAN: Credit cards say on the back that if anyone uses them you still have to pay the bill. 2-182

MR. BRYAN: Until you notify them.

MR. REID: Those are all civil cases.

MR. TORVINEN: The law would be to the culpability, or if stolen through no fault of your own.

AB 553: Authorizes certain actions of peace officers prior to arrest.

MR. SWACKHAMER: I move Do Pass AB 553.  
MR. LOWMAN: I second the motion.  
MOTION CARRIED WITH MR. FRY VOTING NO.

MR. KEAN: Any right to the telephone during the 15 minutes?

MR. REID: Apparently not.

MR. TORVINEN: Anything they take from him they cannot use in court.

MR. SWACKHAMER: This law could be used 100 times for good for one time for bad.

MR. KEAN: Could we amend to contact someone?

MR. REID: You could do that anyway.

MR. PRINCE: I think it is good like it is.

MR. MCKISSICK: I had a short bill on this ready for introduction but I decided the Model Act was better.

AB 640: Requires court to instruct jury regarding certain penalty when requested.

MR. SWACKHAMER: I see nothing wrong with this.

MR. REID: Since AJR was defeated, we should delete "life without possibility of parole." It doesn't mean that.

MR. TORVINEN: What you mean is impossibility of commutation.

MR. MCKISSICK: It is in your jury provision to look into that, whether life without possibility of parole really means that. I think this would clarify the law quite a bit.

MR. REID: I move Do Pass AB 640.  
MR. LOWMAN: I second the motion.  
MOTION CARRIED UNANIMOUSLY.

MR. REID: I move to reconsider AJR 40.  
MR. BRYAN: I second the motion.  
MOTION CARRIED.

AB 666: Permits magistrate to appoint attorney for indigent defendant. 2-100

MR. MCKISSICK: Judge Mowbray says this will save a lot of money.

MR. BRYAN: I move Do Pass AB 666 with the amendment on line 4, striking "oral statement" and inserting "written affidavit."

MR. SCHOUWEILER: I second the motion.

MR. TORVINEN: Raggio says he doesn't agree with "written affidavit."

MR. BRYAN: Without this we would bog down the calendar. You would have to take them back and forth.

MR. FRY: You might have a critical case with this, a magistrate who is not an attorney whereas you should have able and competent defense counsel.

MR. BRYAN: It casts a tremendous burden on the District Court Judge to review all these things.

MR. SCHOUWEILER: Not over 15 to 20% would fall in this case.

MR. REID: Probably not over 5%.

MR. BRYAN: Would you want to say "except in a capital case?"

MR. FRY: It is not necessarily the capital cases that I am worried about.

Are we deleting District Court Judge here?

MR. SCHOUWEILER: That's right.

MR. FRY: What happens on a grand jury indictment?

MR. TORVINEN: 7.260.

MOTION TO DO PASS AB 666 WITH AMENDMENT ON LINE 4 CARRIED, FRY NOT VOTING.  
"Written affidavit to the magistrate."

AB 204: Modifies jury exemption provisions.

MR. REID: I move we concur with the amendment.

MR. PRINCE: I second the motion.

MOTION CARRIED UNANIMOUSLY.

Meeting was adjourned at 5:20 P.M.