

MINUTES OF MEETING - ASSEMBLY COMMITTEE ON JUDICIARY, 54th Session, March 15, 1967

Meeting was called to order at 1:40 P.M.

Present: Wooster, Schouweiler, Hilbrecht, Swackhamer, Torvinen, Dungan, White, Lowman, Kean

Absent: None (Miss Dungan left early)

SB 176: Prohibits hampering of police officers and others at scene of disaster area, inciting of riots, and entering into or refusing to leave a disaster area.

William Sanford, attorney from Reno, was present to speak against the bill.

MR. SANFORD: The bill starts out innocuously enough, then proceeds to describe certain situations, such as fire and flood. I am concerned with the flood thing. Under this bill I would not be able to protect my own property. I have had three experiences with this type of thing, one with an explosion and fire, and two with floods. At one of the floods, somebody stole my thousand sand bags and I had to leave to get some more, and I like to never got back in the area. Sometimes these people get quite presumptuous in the carrying out of their duties.

I frankly think there is police power enough and sufficient ordinances now to authorize peace officers to wall off any area that becomes dangerous to the public. This bill puts the property owner right out of the zone of his own property. The news media are let in to these things, and it should be added to this bill that the people who are not interfering and have reason to be there, like the owner, should be allowed to be there.

MR. LOWMAN: I take it you are objecting to subsection 2 of section 3?

MR. SANFORD: Right. This is pretty broad language.

MR. LOWMAN: You would have no objection to the rest of the bill if this were amended to make exceptions for owners of the property?

MR. SANFORD: Paragraph four of subsection two should include property owners engaged in the protection of their property.

MR. KEAN: I had the same experience with a fire. They wouldn't even let me in to get my accounts receivable. One big problem with firemen and police is that they are looking for evidence. If we amended to let in property owners or occupants of the building, would it be acceptable?

MR. WOOSTER: We will continue this bill and hear from Mr. Earl White when he gets here. He has asked to be heard before we take any action on the bill.

We will now consider AB 220 which has been held over for a full committee. The vote on it before was four to four.

AB 220: Allows certain tort actions between husband and wife.

Mr. White moved to postpone indefinitely AB 220  
Mr. Kean seconded

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MR. HILBRECHT: We have testimony developed by four of our border states who have this law. In cases where inter-spousal immunity is involved, insurance companies write a different kind of policy. I don't think this bill will hurt anybody.

MR. LOWMAN: As I see it, there are two opposing views on this bill. One, it opens doors to collusions. Two, A man and wife are sometimes almost like strangers and they should be able to sue each other.

Is there any other way to get relief?

MR. HILBRECHT: Not money. You can have him put in jail and you can make him pay all medical expenses, unless they are separated and it was the wife who left the home and him. If she left the home, then she is responsible for her own bills. There would not be a community obligation.

MR. WHITE: This will open doors for all sorts of things. If a man falls off a plow and hurts himself, are you going to go on and enable him to sue himself?

MR. HILBRECHT: You have a point there. The common law used to be that husband and wife were one, but this has been done away with.

MR. SWACKHAMER: We are talking about things that will happen very rarely. Once we open the door, it will be prevalent and frequent. We should weigh one harm against the other, and obviously the bill should not go.

MR. LOWMAN: Are we talking about liability insurance or medical or both?

MR. WHITE: Both. The general concensus is that there is quite a lot of fraud.

Mr. White's motion to indefinitely postpone AB 220 carried with Swackhamer, White, Lowman, Wooster and Kean voting Aye, and Schouweiler, Dungan, Hilbrecht, and Torvinen voting No.

SB 174, 175 and 176

Assemblyman Woodrow Wilson introduced Mr. Earl White, an attorney with Southwest Gas and treasurer and member of the Las Vegas Branch of the NAACP.

MR. WHITE: At a meeting of our Branch last Sunday we discussed these three bills and we feel that they are pretty much a package. They involve criminal laws, and we are interested in the people most affected by these bills.

On 176, we have no objection to the stated intent, but we are particularly concerned with section 5. The second subsection says that this does not apply to members of the labor organizations. This is clearly a cause for concern. This kind of conduct should apply to everyone. Labor should not be exempted.

SB 175 is the bill that we are most concerned with because we feel that it is aimed quite directly at Civil Rights organizations and their activities. Our position is based on the fact that the constitution gives to everyone freedom of expression and petition. This freedom must be balanced with the right of the state to maintain law and order. We feel this proposed legislation is meant to take away from the First Amendment and these rights that are really the cornerstone of our individual rights and freedoms.

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We agree with Justice Brandeis that the right to the freedom of speech is not circumscribed so as to be able to yell "fire" in a theatre where there is no fire. But we do have the right to bring attention to our problems that we have to the Mayor and other elected officials. According to this bill, if we do this we can be arrested.

Our Las Vegas Branch of the NAACP will be affected by the second section because most of our meetings are held in public buildings. Now, for a piece of legislation which will allow someone who doesn't like our activities to instruct a custodian to have us vacate the building and if we don't we will be subject to arrest--this is clearly unconstitutional. There is no justification for passing it. It is hard to conceive that this could receive the approval of the committee with its very fine leadership. In the event that my judgment is wrong and it is passed, I serve notice that we intend to test the bill as to its constitutionality.

MR. TORVINEN: I can envision a situation and there is some question in my mind that we really do need some legislation, particularly for public buildings. Say a group wants to meet in the City Council room and they won't give them the right. Then they say well if you won't give it to us we will sit here forever. Then the sheriff carries them out and injures someone on the way. This could be a real problem. Is there any objection to narrowing this down to help with this particular situation.

MR. WHITE: There are some cases dealing with this thing, concerning people's right to demonstrate on certain kinds of government property. When I first saw this bill I thought it was from one of those semi-literate societies to get at this thing. The Supreme Court recently decided on a case where some people were in a court house and were hampering the carrying on of the business. The Supreme Court upheld the conviction.

MR. SWACKHAMER: We enumerate situations that might happen and give punishment unless people can show that they were pursuing lawful business in the building or property at the time.

MR. WHITE: You have to have standards to apply and the standard could go all the way down to the custodian. You would get to the question of whether it was lawful business after the person had been arrested, fingerprinted, and put in jail.

MR. SWACKHAMER: We are putting a big burden on the custodian aren't we, to determine if this is lawful business or not?

MR. LOWMAN: Is there no limit to the right of a person to stay in a public building beyond normal hours?

MR. WHITE: There are city ordinances and everything else to take care of these things.

MR. LOWMAN: What section of the constitution is involved?

MR. WHITE: The right to assemble.

MR. WOOSTER: Would you like to address a few remarks to SB 174 while you are here, in case it is passed and we get it?

MR. WHITE: Essentially, 174 amends the unlawful assembly statute, which in the first section gives the Justice of the Peace the duty of asking 6 or more persons who are unlawfully riotously assembled to disburse. In the next section, this duty devolves upon the sheriff and in the third section upon the constable and in the fourth section upon the mayor and all of them, including aldermen and the Chief of Police. I wouldn't

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know an alderman if I saw one. Six people is one thing, but this proposes to make it two. This thing looks like nothing more than a vague kind of disorderly statute. We are opposed to it. I hope if it comes to this committee, you will take a real careful look at it.

MISS DUNGAN: As a courtesy to me, will you please consider AB 180 so I can leave?

AB 180: Abortion Bill.

MISS DUNGAN: I understand some suggested amendments have been assembled in one spot. Medical people had made additional suggestions.

MR. WOOSTER: 1. Line 17. Delete provision for mental health as ground for abortion. 2. Provision be inserted to allow the District Court Judge to enter an order after hearing from three physicians. The hearing would be confidential unless otherwise ordered.

MISS DUNGAN: I have no objections to any of those proposed amendments, nor to another which has been suggested, increasing the number of physicians to five rather than three.

MR. SWACKHAMER: I feel, personally, this is a good bill and something we are going to have to get into some time, but so was the Early Parole Bill. It was a good one too. I think it is too early politically for this bill. I don't want to set up some of my good friends to get shut down by this.

MISS DUNGAN: I think we should adopt the amendments and bring the bill out.

MR. TORVINEN: If we are going to prepare amendments, I would like to suggest one for line 20 and maybe one in the next section. Maybe we should add forcible rape.

MR. HILBRECHT: We have an abortion law now which enables one doctor to make the decision. It amazes me that this is called a liberalization of the abortion law. What it is really trying to do is make something that is workable.

MR. SWACKHAMER: I thought we were trying to close up a dirty, stinking practice. I didn't think we were concerned with people too much morally. You cannot legislate morality.

MR. LOWMAN: Dr. Joseph George of Las Vegas proposes a statutory review so if you get too many abortions showing up in one place you can go find out if it is being abused.

MR. HILBRECHT: Some people think we should put part of this burden of deciding on the judges. That is what they are for. There is pretty good unanimity, even among the medical people that the mental health would be too difficult to administer.

MISS DUNGAN: Even if we leave that out, we are still dealing with the main thing they have asked for. I move we have the amendments prepared in accordance with the discussion and then study it further.

Mr. Hilbrecht seconded the motion

MR. WOOSTER: The amendments:

1. delete "or mental"
2. add forcible rape, line 20
3. revise the section to provide for a submission of this question to the District Judge to get a court order to perform an abortion, such proceedings to be confidential.

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On the vote on Miss Dungan's motion to get amendments printed and study, the vote was unanimously in favor.

MR. WOOSTER: I will meet with Mr. McDonald and try to get these amendments ready by tomorrow. I don't think this is the kind of bill we should keep hanging onto, so let's think about the whole problem and take final action within the next few days.

AB 371: Authorizes employees of Services to the Blind Division to serve in part-time capacities to help the blind.

Mary Frazzini was present by invitation to speak to the committee on the bill. She brought Mr. Mervin Flanders with her, saying he was much more knowledgeable on the subject than she was.

MR. FLANDERS: This bill provides an exception to the conflict of interest law and it was submitted for that reason. As an example, I myself have had several opportunities to serve on trusts connected with providing services to the blind. I hesitated to accept them because of this conflict of interest thing. There was some doubt whether there would be a conflict of interest to serve in those capacities. Functions such as these would be commendable adjuncts to those provided by the State Agencies.

I can't bring an example to mind right off of how conflict of interest could develop, but the purpose of this bill is to make it possible to serve in an individual capacity as a trustee and also serve for the State with the blind. To provide this assurance that there would be no conflict, we asked that this bill be prepared so there would be no concern or mention of a violation of the conflict of interest in a technical manner. I did refuse a position that I considered to be a conflict of interest, but my interpretation might not be the same as some one else's.

AB 377: Establishes rights of visually and physically handicapped.

MR. FLANDERS: I brought ten copies of our request to the bill drafter to pass out, because the bill as drawn up does not agree in all ways with our request. It does not conform entirely to the bill drafting requirements which we feel to be necessary for the physically impaired individual.

Section 17 is a provision dealing with contributory negligence. Judicial decisions throughout the country have pointed out the rights of the disabled in different situations. For instance, an individual crossing the street with sighted individuals was not carrying the white cane. They were all hit and injured. The sighted people have been cleared of contributory negligence but the blind person has been found guilty because he failed to carry a white cane and did not have a dog.

In our request, we asked that not carrying a cane and not having a dog not be used as proof of contributory negligence. A blind person should not be guilty of this unless he is guilty in the same way as a sighted person. The fact that he does not have a cane or dog should not be used against him. This does not cover a private automobile and many other situations that could arise.

Another section has to do with the Cane Proclamation of October 15. This, as worded in our bill drafter's request, has been introduced in 48 states. My only comment on section 2 is on the provision contained in subsection 4-C of subsection 2.

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One of the problems of rehabilitation is the presumption by others that are not disabled that assistance is needed. This preserves an attitude not beneficial to the disabled. This is a purely philosophical objection. Most disabled people, if they need help, will ask for it. I don't think the annual proclamation of the need for assistance is of any use.

The bill is not restricted to the blind or to the visually impaired because the needs of other disabled are equally as great.

In section 6 there is a provision in the bill which deals with hotels and motels and the charging of extra fees when a guide dog is brought into the hotel or motel or any public place of accommodation. If additional space is furnished then the hotel can charge additional. Usually, the dog does not need additional space because it goes into the room with its master. The hotel cannot deny service to an individual having a guide dog, providing he paid for any damage done.

This charge has been an indirect method of keeping these people out of the hotels and motels. This has frequently occurred. I know of an instance in Reno during the last year and a half. We recommend deletion of this ability to charge extra fees for the dog.

There is a similar provision in section 9 dealing with common carriers. Obviously, when a dog goes along there is extra space used, and if the carrier would wish to deny services to these people, they could use this medium. The blind and other disabled people are denied access to common carriers rather frequently. To obstruct the nobility of disabled people in their need to travel seems very unreasonable. Some carriers provide half-fare for the guide of a blind person. I am opposed to this because it denies free use of the common carrier. They deny access but charge extra fees. This might be called a Civil Rights bill for the blind.

MR. WOOSTER: Since you have several objections to the wording, would you be so kind as to furnish to the committee written comments about what should be changed or what should be added to the bill. We will hold AB 377 until we receive this information from you.

AB 366: Makes lodging establishment regulations uniformly applicable and requires strict enforcement thereof.

Assemblyman Dr. John Homer was present to speak for the bill.

DR. HOMER: I have an amendment to the bill which would simply make this law with regard to outdoor advertising applicable to every county in the state, instead of only the counties of more than 10,000.

Ormsby County Motel Association asked me to present this bill. At first they wanted it for the big counties but now they want it to apply to all the counties and cities.

MR. LOWMAN: This is to regulate advertising in the motel business?

DR. HOMER: Yes. This is different from some of the industry-regulating bills we have had this session. This is to protect the public against deceptive advertising.

MR. SWACKHAMER: There are some good features in the bill. The motel industry is getting a bad name with the public. This bill would provide that rates be posted. A motel

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should not be able to charge \$10.00 for five days and then up to \$25.00 for the week-end with no notice being given. I see nothing wrong with \$10 for five nights and \$25 for the week-end if this is advertised.

Mr. Swackhamer moved Do Pass AB 366  
Mr. Torvinen seconded  
Motion passed unanimously

AB 371: Authorizes employees of Services to the Blind Division to serve in part-time private capacities to help the blind.

Mr. Lowman moved Do Pass  
Mr. Swackhamer seconded  
Motion passed unanimously

SB 175: Requires persons not engaged in lawful business to leave buildings and grounds of public agencies upon request at times when agency is not open.

MR. SWACKHAMER: These guys have a point when they point out that the custodian should not be the one to decide who stays and who goes. Would it be helpful to amend so that on order of a magistrate or some judicial official they could be removed.

Mr. Torvinen moved Do Pass SB 175 with two amendments, one to limit to buildings and two, to follow Mr. Swackhamer's suggestion.

MR. WOOSTER: I wonder if we need this bill. We have lots of laws about disrupting an officer in the performance of his duties.

MR. TORVINEN: Their supposed notice doesn't apply except to private dwellings. A peace officer really doesn't have right to arrest for this now.

MR. WOOSTER: Public buildings belong to the public.

MR. WHITE: What about damage on public property?

MR. TORVINEN: There are plenty of laws on destruction of public property, but you have to catch him at it.

On this suggested amendment that there should be an order from a peace officer or a magistrate: Is a peace officer too broad?

Mr. Kean moved to make these amendments.

MR. LOWMAN: I think it should be a peace officer.

MR. SWACKHAMER: This is putting a burden on the person to make decisions which he ordinarily should not be asked to make.

MR. TORVINEN: He won't make the decision. Someone at the building will call him.

Mr. Wooster appointed Mr. Torvinen a committee of one to work this out.

Mr. Torvinen moved to go peace officer and "in such building" and strike out "such property".

Mr. Kean moved to so amend  
Mr. Torvinen seconded  
Motion passed unanimously

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MR. SWACKHAMER: I would prefer to see these amendments before we take final action.

SB 176: Prohibits hampering of police officers and others at scene of disaster area, inciting of riots, and entering into or refusing to leave a disaster area.

MR. KEAN: An owner of a building should be protected in this situation.

Mr. Torvinen moved postpone indefinitely SB 176

Mr. Schouweiler seconded

Motion passed unanimously

AB 222: Creates presumption of negligence of operator of motor vehicle who dies in accident not involving another vehicle.

Mr. Wooster passed out copies of amendments to the bill which had been prepared by Mr. Hilbrecht and Mr. Torvinen, with regard to the Dead Man's Statute. He said that actually the amendments delete the entire bill and comes up with a new one.

MR. TORVINEN: Section 1 A says no party to a transaction can testify when the other party to the transaction is dead.

The meat of the bill is in section 3 which provides that these provisions do not apply to cases of personal injury or property damage. It enables the person who is suing to testify concerning his injury.

I would suggest that we hold the bill over until Mr. Hilbrecht is present.

MR. SWACKHAMER: I would like to request that Mr. Torvinen explain this thing further.

MR. WOOSTER: A typical case is an accident where one party is hurt and sues the guy who did it for negligence. The facts of the accident or transaction cannot be testified to if the one who did it is dead.

MR. TORVINEN: There is no presumption now. That has been amended out. In other transactions you have a way to protect yourself but there is no way to protect yourself ahead of time in an automobile accident.

MR. SWACKHAMER: If I were the only one left after an accident, do you think I would give testimony that would hurt myself? Of course I wouldn't.

MR. WOOSTER: That is the reason for the Dead Man's Rule. There is no one in existence to rebut the testimony.

MR. SWACKHAMER: Is there a need for this new act?

MR. TORVINEN: Mr. Hilbrecht and I think there is. An injured person many times has no cause for action and can get no compensation.

MR. SCHOUWEILER: Most accidents occur where there is a means for investigation. All this is admissible.

MR. WHITE: Hasn't the present law been working pretty well.

MR. TORVINEN: It is working all right, but some cases just have no cause of action.



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MR. KEAN: I am inclined to some testimony. The Judge and Jury could weigh the fact that there was no one to oppose the testimony.

MR. WOOSTER: The only basis for making an exception is that this is a case where a man cannot protect himself. This would give some chance for protection.

MR. KEAN: What have other states done with this? What is the general practice throughout the United States.

MR. TORVINEN: I don't know. I have never looked into it.

Mr. Lowman moved to indefinitely postpone AB 222

Mr. White seconded

The vote was a tie, with Lowman, White, and Swackhamer voting Aye and Torvinen Schouweiler and Wooster voting No.

Mr. Wooster said the bill would be held over for a vote by the full committee.

Meeting was adjourned at 3:35 P.M.