

MINUTES OF HEARING ON THE NARCOTICS BILLS - ASSEMBLY JUDICIARY COMMITTEE
55th Session February 27, 1969

PLACE: Assembly Chamber

TIME: Meeting was called to order at 2:20 by Chairman Torvinen

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

MR. TORVINEN: This is the time set for a public hearing on a number of bills having to do mostly with narcotics. To the list already published for this hearing, we have added AB 490 and AB 491. These deal with dangerous drugs specifically.

As we have a large number of these bills, I am not going to ask that you talk on any particular bill. First, we will have general comments about the package of bills. Ordinarily, we listen first to those who are in favor of a measure and then hear those persons opposed. Committee members may ask questions of each speaker as he finishes his remarks.

We will hear first from a group of ladies from Las Vegas.

The first speaker from this group was Mrs. Sallie Adair, president of the Clark County Concerned Mothers for Narcotics Control. Her remarks and those of her two companions, Mrs. Judy Hutchins and Mrs. Marilyn Flangas are attached to these minutes.

WILLIAM RAGGIO: District Attorney of Washoe County: At this point, my remarks will be brief. I congratulate the committee and those who have been responsible for the introduction of the bills under study today. The Legislature had the foresight to establish a commission to study this very significant problem. It is a problem that is significant in this area and all over the United States. During my tenure as President of the National Association of District Attorneys, I was made aware of the extent of this problem and the concern of the law enforcement people all over the country.

This Legislature would have been remiss if they had not done something about this during the present session. I have already written Mr. Torvinen that I am in favor of AB 206 through 223. Also AB 37 and 54. I have suggested one technical amendment to AB 217 adding the district attorneys as peace officers.

Prosecutors realize their responsibility in this area. We are trying to institute programs of education throughout the schools and the communities. It would be a great help to be able to show these materials, but there are others here and I don't want to take any more time right now.

MR. LOCKE: Pharmaceutical Board: We in pharmacy are as interested as anybody in this package of bills. We have studied them carefully. There may be some minor changes, but we are very much in favor of the whole package.

MR. O'KEEFE: Proprietary Association of General Medicines: AB 37 is the bill I am here to speak about today. We have brought an amendment which will make it possible for people to continue to buy proprietary medicines without having to travel, in many cases, miles to reach a drug store.

With respect to possible abuse, the Legislature in 1967 recognized and provided for this particular problem by enacting 454.220. This Act authorizes the Board of Pharmacy to restrict any drug or medicine if it is found to be dangerous. Under this law it can be controlled.

We respectfully urge your support of AB 37, with the following amendment:

Amend section 1, page 1, by deleting line 2 and inserting: "639.073
1. [If] Except as provided in subsection 3, if the public interest would best be served, the board".

Amend section 1, page 1, by inserting between lines 12 and 13:

"3. This section does not apply to patent or proprietary medicines, meaning nonnarcotics, nonprescription packaged medicinal preparations which are promoted or advertised by the manufacturer or primary distributor."

FRANK TITUS: Representative of the Pharmaceutical Association, State of Nevada: Concerning AB 37: Proprietary medicine may be one of the problems that Mrs. Flangas has as a stepping stone to major drug abuse. I don't think we have any at the present time but we need the authority to remove these drugs if the problem does come up.

I would like to go on record as being very much in favor of the proposed amendment.

MR. RAGGIO: I would like to suggest one amendment to AB 210, line 17 section 3 subparagraph 2, permitting testimony by affidavit. 10 days notice will be given. We have no objection to making this 3 days, in fact, we would suggest it.

PETE KELLEY: Representing Nevada Retail Association: We are in favor of AB 37, with the proposed amendment that Mr. Lowman has drafted. We want people to be able to continue to buy proprietary medicines. If there is a dangerous drug, then the State Pharmacy Board has the power to pull it off general sales.

MRS. SHIRLEY WEDO: State PTA: Legislative Chairman: No group of citizens is more greatly concerned with the strength of the narcotics laws than the Nevada Congress of Parents and Teachers. We have actual statements on these very things that you have proposed. We appreciate the opportunity of offering those here and ask for favorable consideration of these bills.

AL CHAMBERLAIN: Vice-President, Nevada Narcotics Association: I represent all branches of law enforcement in the State of Nevada, including about 1400 police officers, the Sheriffs' Association, Nevada Peace Association and about 75-80 officers of the State.

We had our own legislation which we attempted to put in and it is included in the package. We support this one hundred percent because it will give us the tools to fight the narcotics problem.

Narcotic addiction on a federal basis has increased two-fold this past

year. It is a grave problem. I have been asked to tell you of the support of a number of PTA groups, Kiwanis, Lions and many other groups. We will all be remiss if we do not support this package of narcotics laws and regulations.

JIM SANTINI: Public Defender in Clark County: I certainly agree with the groups here. I am in favor of these laws on narcotics. What solutions are to be used to combat the problem? I have examined these bills, most of which are concerned with prosecution. We must realize that punishment alone is not going to be the solution to the problem. When a man is hooked, lock, stock and barrel, if the punishment were one thousand years or the electric chair the man could not help himself.

What we must do is to help the youth, reach them by communication and education. For every one of these people, pushers and users that I knock down, four more pop up. These bills may be a partial solution but we must greatly increase our efforts to get to these kids on an educational basis to prevent them from becoming one more who has lost his mind, his soul and his body to narcotics.

Concerned people will not solve the problem. It is just beginning. We must reach people by education as well as by punishment. In this realm, an ounce of prevention is worth a pound of prosecution.

MR. FRY: I am concerned with AB 210, pertaining to the use of an affidavit by testifying physician.

MR. SANTINI: I would like to reserve some comments for each particular bill. In this regard, I am concerned with the denial of the right of prosecution. It says if you want to question let us know. You are requiring an assertion of an already established right. There may be problems if this is enacted. Perhaps we would be required, if this is enacted, to request in every instance for the appearance of that particular witness.

MR. REID: Do you have specific comment on any other bills?

MR. SANTINI: AB 211 provides that proof that defendant was in possession of dangerous drugs, etc. The bill was directed toward those instances of eliminating the prosecutors burden of proving that he did not get it legally, amended to release affirmative burden of proof. I am concerned with the encompassing nature of the language. It covers the whole field. It is too broad, and it raises rebuttable questions. The man would then have to come forward, in accordance with the broad construction of this language, and prove that he did not know that it was marijuana, or that he did not know that he was in possession of it. The bill goes too far from the direction of the man being presumed to be innocent until he is proven guilty. The prosecution should not have to prove that he got the evidence lawfully.

MR. KEAN: AB 212: I have had some phone calls on that one with regard to pieces of art, collector's items, etc. There appears to be a lot of these things around. Can we differentiate from that reference to paraphernalia?

MR. TORVINEN: It refers to opium pipes, etc.

MR. SANTINI: Those persons who called you had the same problem. The language is too broad. It should be more specific. For instance, there is a man in this audience who is smoking a pipe. I don't think he is smoking marijuana but he might be construed to be under this bill. The language should be specific, so that these things will be clear.

If you clear up my objections, I think that will also take care of these people's problems.

MRS. LINAHAN: I think we are working on the wrong angle on this subject. I have something here that might help.

Punishment should be on the financial end. Punish anyone who receives money for traffic in narcotics and leave the children alone. I have done numerous researches on this. The war in China is for narcotics domination. When I see a bill generally devised so that it would arrest pushers, then I will be encouraged.

Your point of focus should be on the money and not on arresting children.

MR. RAGGIO: May I make a response on the three technical objections raised by Mr. Santini?

MR. FRY: Please discuss AB 213 also, involving persons on premises.

MR. RAGGIO: Concerning the question asked of Mr. Santini about objects of art: I have no objection to an amendment which would delineate objects of art. We do have similar laws on the books right now, such as those pertaining to burglary tools, which could include screw drivers, hammers, etc. The application or use of the item would prove that they were burglary tools. Smoking or ingesting opium through a pipe would prove a narcotic drug use. I believe these objects of art can be eliminated as a problem.

On the second objection, AB 210 concerning use of an affidavit: This would permit a drug expert to testify through an affidavit. I believe Mr. Santini's concerns are really baseless. The constitution provides for witnesses. This allows the defendant to waive that constitutional right, which he may do. This is a matter of convenience and it is saving and economic. Example: Yesterday in Washoe County we had a grand jury consider some 13 cases involving narcotics. This required the presence of a chemist from the Nevada Department of Health all day long. The defense counsel can verify his qualifications and find that he is an expert without his presence and he can give through an affidavit his expert testimony that he examined such and such and it is a narcotic drug, or dangerous drug. This evidence is usually introduced without cross-questioning. Very few really require attendance in person. These few will decrease as time goes on. It is a very impractical thing the way it is now.

MR. TORVINEN: These questions only apply to the preliminary hearings to determine if this is in fact the person who was on the premises, etc.

MR. RAGGIO: There is no right of cross-examination or compensation the way it is now for this.

ABout AB 211: I think Mr. Santini has been unduly alarmed on this

situation. If you will read the language carefully, you will see what I mean. It would merely establish a doubtful presumption. The State must prove that a substance was a drug. The defendant can rebut this very easily by showing that his possession was lawful. It is better this way than for the state to have to go out and disprove all the situations in which he might have received it lawfully. The only presumption raised is that narcotic was unlawfully possessed. If it was lawful, the defendant can easily prove it.

AB 213: This provision would make any person guilty of a misdemeanor when on the premises where it is being used. It applies only when he knows illegal drugs are being used. You may have a roomful of 30 people, all of whom are arrested, but maybe only a certain number will be in possession. This bill is a very real need, I assure you.

Where truth can be shown that the smell of marijuana is in the air and usage can be seen, a person present can hardly claim exemption from prosecution.

MR. FRY: My concern is that it does make this a misdemeanor.

MR. RAGGIO: An easy way to correct that is to make it a felony, which possession already is.

AB 214 is designed to meet the problem raised in some jurisdictions where cases have gone off in different directions about how much of a drug means possession. Any amount sufficient for analysis.

I share your concern about AB 214, because I do not want this legislation to be considered as repealing of our present law. If that problem does exist, there is no reason it could not be made a felony.

MR. FRY: Do you think there is a possibility of this problem?

MR. RAGGIO: Since you raised it, yes, I do.

MR. TORVINEN: We will now hear from opponents of these bills.

DR. MICHAEL ROUSE: Graduate Assistant at University of Nevada: I represent a group composed of students and faculty members of the University of Nevada.

We realize that there is a problem here but we are concerned with your approach to this problem. The latest figures estimate that there are 12,000,000 marijuana smokers and 100,000 to 200,000 heroin addicts. This is about nine to one. In other words, marijuana is not a stepping stone to heroin.

The President's 1967 Commission said that no drug except alcohol has been linked directly with crime. There has never been a serious instance of crime caused solely by marijuana. A survey last fall showed that 50% of the University of Nevada students had used illegal drugs.

You should not legislate laws you cannot enforce. If you do this, you will be arresting 50% of your children in college. You would not want 50% to be having disrespect for the laws. Surveys are rapidly

proving that marijuana is not a dangerous drug. In fact, they are proving that it is a relatively safe drug. There are drugs that addict and those that do not. Usage of drugs is already a felony and you have not stemmed the growth of the drug problem.

I question the philosophy of the ladies from Las Vegas. They want you to protect their children by throwing them in jail. You should try to educate your children with the truth, whatever it may be, and the truth is that marijuana is relatively harmless.

Your laws should be designed to protect people from people. You cannot protect people from themselves. I dare you to come up with figures showing a connection between marijuana and crime.

MR. REID: I have never seen a report showing causal effect between marijuana and crime. Aren't heroin addicts connected with crime? Are you in favor of legalizing heroin?

DR. ROUSE: It is unrealistic to enact these laws when you know that 50% of your children are using marijuana.

MR. MCKISSICK: I have talked with over 300 members of Synanon. Each of them stated he started with marijuana. How do you explain that?

ROUSE: It is true that virtually all heroin addicts first started with marijuana. You must reverse the figures. How many marijuana users did not go on to heroin. An entirely different class of people are using drugs now.

I have never seen a pusher. I have seen people smoking marijuana. I have seen people selling it part-time and handing these things out to their friends.

MR. LOWMAN: You mean to tell us that 50% of the students on the campus are using drugs and you have never seen a pusher?

ROUSE: I have never seen anyone who was doing it purely for profit or who was connected with the underworld.

MR. TORVINEN: Your comment about protecting people from themselves: Is it your feeling that you should not protect people from themselves as a means of protecting society as a whole? You don't feel we should legislate in that field at all?

ROUSE: My experience with the college students is that they tend to be above average students who go on to study law, medicine and other things.

MR. LOWMAN: When we heard testimony on the campus of the University of Nevada the testimony was not in doubt at that time. I suggest you read this report and you might change your mind.

ROUSE: I attended those hearings. I heard witnesses who were there to say what you wanted them to say.

MR. LOWMAN: If this witness is questioning the veracity and integrity of our subcommittee and saying we put words in mouths of our witnesses, I propose we eject him right now.

GEORGE FRANKLIN: District Attorney for Clark County: We have been subjected over the years to the same stack of lies that just presented to you by Mr. Rouse. I will have to admit that law enforcement has failed in many ways to bring attention to the harm of marijuana.

There is a doctor in the hippie movement that likes to stand up before students, while he is not under oath, and say the things he likes to say because it makes him a big man. He told an entirely different story when he testified under oath.

I would like to tell you about the figures of 12,000,000 people using marijuana and 100,000 to 200,000 using heroin. Do you know where these figures came from? A letter to the editor of Playboy Magazine. Using the same source, how many users of marijuana? It says between six and twelve million. He gave you the highest figure.

He says no drug other than alcohol causes crime. I would like to have him with me just once. Let me tell you what happened in just one week. I was called to a murder and found, lying there in a pool of blood, a young man that I had known when he was only four or five years old. He had been at a marijuana party and some fellows got to fighting over a girl and he got killed. It would not have happened in a normal situation. I found my roach of marijuana at the scene.

Four days later, a taxicab driver was all shot up. I found my roach of marijuana. The man who shot him had got high enough to enable him to commit that act.

One month later I filed charges against a three-time loser. He was a marijuana user and a homosexual. He got a 14-year old boy to smoking it, too, then got him to do oral copulation with him and had pictures taken of the act. Then he threatened to show the pictures to the boy's mother if he did not keep on.

No relation between alcohol and marijuana? They may tell you that marijuana is not addictive, but it is. Those of you who smoke know you are addicted. It is habit-forming. And you keep having to have more and more and more to keep up the same effect you got on the first one.

World Health Commission changed the definition of addiction. It is no longer a medical addiction. It is a psychological addiction. We should not compare two evils and work it out on that basis.

Why do they want us to pass laws just to make it legal for the users? I hope you have in your records that great report of Commonwealth vs. Leis which is a trial that took place in Boston. The man was arrested in Boston and they had a 10-day hearing for release. Every expert in the world was called to testify in this trial. There was absolute unanimity that marijuana was a mind-holding drug. Everyone who advocates legal marijuana should read this.

I have never seen a person smoke one cigarette and reach out of an 180story window to pick a dandelion. The medical aspects of "pot" are particularly dangerous. It has a peculiar effect on the human body.

You have heard the suggestion to not harm the guy that is using it but

really go after the guy that is pushing it. To me this is anomolous. I cry when I see the results of marijuana. I am not a hard-hearted prosecutor.

Marijuana is a mind-altering drug. It does lead to psychological dependancy and deterioration of the mind. It is particularly dangerous to those with psychological problems.

India and Nigerial had legal marijuana for 2,000 years. Now Nigeria has gone all the way from legal mariguana to the death penalty, all in one step.

Perhaps the younger generation does have the right to rock the boat but they are not the only ones who have had problems. We had them, too. They may have a right to rock the boat but, by God, they do not have the right to jump out and take everyone with them.

I am 100% in favor of keeping these drugs as felonies. If you even consider reducing this to a misdemeanor you are running into the laws of arrest and it will be impossible to get a conviction. No one sits around in the presence of a police officer and smokes "pot", and now we have to see them doing it. Every single study indicates it is a dangerous drug.

An educational basis just won't get the job done. Punishment is a deterrent to crime. Punishment is aimed mostly at those who have never taken it the first time. One arrest and they are dead for a lifetime. If punishment were no deterrent and there were no punishment for not paying your income tax, how long would the Federal Government operate?

MR. SANTINI: From D.A. Office in Clark County. Testimony here today has been out of perspective. The ones supporting this legislation are mostly over 30 and the ones opposing it would seem to be under 30.

I would like to give you a few of my thoughts as a former student of the University of Nevada. Curiosity will never be removed from youth nor the desire to adventure.

If we were to take these figures of 50%, this would not mean that anywhere that many were regular users. Since I feel as I do about maintaining our laws in this area, I would like to refer to Dr. Goddard, in an address included in this same news release, Sept. 1968. "Some effects seem reminiscent of LSD, increased laxity lasting for hours and sometimes weeks. It is reminiscent, also, of the derelicts on Skid Row. We don't know yet whether it alters the chromosomes. We need more research."

Even the hippie idol, Mez Mezzro, quit smoking drugs. His advice is "don't do it."

MR. RAGGIO: Perhaps I am misinformed about the purpose of this hearing. I thought we were just reviewing these bills. I did not know anything about a move to reduce penalties.

My office has materials we would be glad to make available to the committee.

MR. TORVINEN: Mr. Rouse, would you like an opportunity to speak further at this time?

ROUSE: Not at this time. Maybe later.

MR. TORVINEN: Any further comments on AB 37?

MR. KEAN: We have heard from the pharmaceutical people and we know that they are dedicated to what we are trying to do. There is another group, the chemists, and there is another thing, the dangerous drugs. I am talking about the raw products from which these things are made. I have a chemical store, probably the largest one in Nevada. You would be shocked at the amounts of these ingredients that we sell. We are legal to sell them and we are told to continue selling them, but before this session is finished we will close that gap.

Putting myself out of business? That's fine. They come in and buy this stuff in 200 pound barrels and make what they want with just a test tube and a little knowledge, which is not hard to get.

Mr. Torvinen, at this point, reviewed every bill in the package, giving the number of the bill and a short explanation of what it is about.

MR. SANTINI: I understand Mr. Hilbrecht and Mr. Swackhamer have a proposed drug supervisory law which would be under law enforcement. I would prefer that it be under the other things rather than an independent thing. If their bill goes through - AB 205 would surely be much better?

MR. LOWMAN: You have to put these things under some existing commission and the nearest we could come to was Parole and Probation.

MR. RAGGIO: I have a minor suggestion about AB 210. I have already suggested an amendment to make notice 3 days instead of 10. I would also like to suggest that the notice be sent to defendant's counsel unless he is not represented by counsel.

MR. LOCKE: I would just like to mention SB 21 which has passed the Senate. It is upgrading pharmacy laws.

MR. TORVINEN: Did you talk to the Senate Committee when they were considering the bill?

MR. LOCKE: Yes, we did come over and talk with them.

MR. TORVINEN: Because of time limitations, most of you have not had the opportunity to look at AB 490 and 491. If you have comments after you have studied them, would you please make it known to the committee that you do have comments on the bills? And do it within the next week? We would appreciate it.

If there are no further comments we will close the Assembly Judiciary Committee Hearing on the narcotics and dangerous drug bills. We want to thank everyone for coming and giving us the benefit of their thoughts and ideas. This is a very technical field.

The Hearing was adjourned at 4:10 P.M.