

MINUTES OF MEETING - ASSEMBLY COMMITTEE ON JUDICIARY, 55th Session
March 25, 1969

Meeting was called to order at 3:20 P.M. by Chairman Torvinen.

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

ABSENT: Schouweiler.

AB 554: Provides for electronic interception of communications.

MR. HANCOCK: One of the foremost experts on wiretapping in the U.S.

I really don't see any problem in the area of suppressing evidence.

Perhaps it would be best to go through the bill briefly. Section 11 gives the Attorney General and the District Attorney the power to ask for an order for wiretapping. I would suggest that they also be able to delegate this authority to their deputies, since they will not always be able to see to it personally.

Section 11 also brings up a problem that runs all through the bill, the past tense. It is easier to make it this way, I guess. You begin the wire tap and then you go explain why you did it and secure the order. There is some question as to the constitutionality of this procedure.

The Fourth Amendment is what may be violated by this act. You must show the type of communication that is about to be intercepted. We may have judicial interpretation because of some of the language in the chapters.

A bookie was making telephone calls from a telephone booth. The police put a bug on the booth. He walked in and made some calls, then they removed the bug. This is as narrow as you can get. Catt says it is OK. You can do that. A majority of opinion is directed toward the circumstances in this case. This was in Los Angeles.

Just saying you can get an order for 30 days has probably already gotten you into trouble. They will probably say "No, you can't do that." To draft something like this is another problem. It is hard to say how the Supreme Court will interpret any of this. My particular objection is that the bill says 30 days.

Another area concerns privileged communications. If you are going to tap a lawyer or a doctor, you have to show additional information. It is not spelled out exactly what this additional information is.

MR. TORVINEN: Is this the same as the Federal Act?

MR. HANCOCK: They have tried to maintain the Federal Communications in toto.

Another problem is the emergency situation where the police can go in and tap for 48 hours and then run back and get a warrant. There is no definition of what constitutes an emergency. He may not have time to run back and get a warrant, but if it takes four to six people to install a wiretap, as I have been told, then it seems to me that one

person could surely be spared to go back to get the warrant. 2-207

MR. TORVINEN: Under the definition of "interception" on page 1, I have a question. Do you feel that the way this is written it would prohibit one person from recording the conversation at his end? The court has held that if one person in the conversation consents it is constitutional. Is that barred by this statute?

MR. HANCOCK: I would think not. I don't see how the definition of "intercept" has anything to do with it.

MR. BRYAN: In reviewing this bill, do you feel that there should be certain amendments made?

MR. HANCOCK: Very definitely.

MR. REID: Are you familiar with our present statutes ?

MR. HANCOCK: Not really.

MR. KEAN: With regard to prohibition against blackmail: That is provided for in our present statute. It says something about prohibiting disclosure.

MR. HANCOCK: The only disclosures that may be made are: 1. to an officer of the law; 2. in court; 3. can be disclosed in civil matters.

MR. KEAN: Is there anything in this new bill to prevent disclosure or prevent blackmail?

MR. HANCOCK: In the bill I drafted there are provisions for these things, but I don't see anything in this bill on that.

MR. KEAN: This is not as good as what is already on the books. It is lacking in many things.

MR. TORVINEN: In view of your comments and our time limit, do you think it would be practical to try to fix this up?

Our present law is limited to filing in extortion and a few limited cases.

MR. KEAN: Our present statute is too narrow and this proposed one is too broad.

(Mr. Hancock was excused at this point, 3:40 P.M.)

MR. TORVINEN: Does anybody want to take any action on this today?

MR. KEAN: I think we should just forget it and then work on it for the next two years.

MR. KEAN: I move to Indefinitely Postpone AB 554.

MR. BRYAN: I second the motion.

MOTION CARRIED WITH SIX AYES AND TWO NO'S.

MR. REID: As I understand it from the law enforcement people this is not a significant problem. It will not make too much difference.

MR. KEAN: When the wiretapping act was passed, the biggest motive at that time was blackmail. This new bill doesn't even touch that.

Let me say for the record, I am in favor of reviewing this two years from now.

MR. BRYAN: I am in favor of having Mr. Hancock go into this for us and draft something that will meet the objections which Mr. Kean has to the proposed bill this year.

AB 633: Provides for nonprofit health care corporations.

MR. TORVINEN: When word leaked out that we were not too much in favor of this, we started to get deluged with telephone calls.

MR. MCDONALD: I think they need a lawyer. They took a run at this once before with a bill which the Governor vetoed on legal advice.

California has a similar law to this and we kept it in mind while drawing this bill. The California law allows them to form these corporations. If you go under NRS 180 you can form these for almost any purpose. We must help keep the dentists from violating their professional ethics. This proposes to build in language to prevent that.

I wrote a long three-page letter to the State Board pointing out what they could do.

MR. TORVINEN: Without legislation?

MR. MCDONALD: They might run afoul of the insurance laws. The bill was drafted according to the suggestions I made to them. (Read some of these suggestions.) The bill follows the California law.

We went to NRS 631 to determine whether membership would be construed as taking part in fee-splitting with this.

MR. TORVINEN: Apparently, the optometrists are now doing what the dentists want to do under this. Do you know anything about that?

MR. MCDONALD: They state they need this so they can sit down with a certain number of members of the profession and set up these organizations.

MR. TORVINEN: The committee thought this would work like Title 19. On that the propaganda was that it would lower prices, but instead it raised them.

MR. MCDONALD: The rate will be whatever they negotiate. Page 3 of the bill. It seems to me that the fee-splitting thing might be one of the grounds for revocation or disciplinary action. This did worry me.

MR. BRYAN: Can we change 631?

MR. MCDONALD: Keep section 2, if you are going to do it that way. Expand a few sentences in section 1.

MR. REID: Let's be realistic. What they want to have is an organization

with which they can deal with the Labor Unions.

MR. MCDONALD: This section sets forth their ethics. I don't know whether this violates any of them or not.

What about the dentists who don't join? If you go for the bill, you could take care of this by saying this is not a violation of professional ethics.

MR. TORVINEN: Probably one reason for the strong fee-splitting provision is that years ago there was some scandal about fee-splitting with laboratories.

MR. MCDONALD: In May of 1968 the local man came to see me on this. I told him if he wanted something drafted to let me know. Then I wrote them the three-page letter of suggestions. On January 6, I got a "hurry-up" letter saying they were having a meeting in one of our desert spas to look over the bill. Of course, the bill wasn't drafted. I gave the bill to Mr. Ashworth February 27.

In almost all our State Boards, action depends on how interested the members are.

MR. TORVINEN: Do they have their own house counsel? Currently?

MR. MCDONALD: I don't know. They have employed counsel at times in the past I know.

MR. TORVINEN: They indicated that this bill must go unamended.

MR. FRY: I talked with one corporation lawyer and he thinks section 1 is completely unnecessary.

MR. BRYAN: Could we amend 631, page 1, at the beginning?

MR. REID: I have received several telephone calls and as I understand it, they want this passed as it is.

MR. KEAN: My dentist doesn't care whether we ever pass this.

MR. PRINCE: I move to kill AB 633.

MR. LOWMAN: I second the motion.

MOTION CARRIED WITH FIVE AYES AND TWO NOES AND ONE NOT VOTING.

AB 725: Extends provisions for personal service of process outside of State.

MR. TORVINEN: This is the "long-arm" statute.

MR. MCDONALD: This bill had so many sponsors that no one remembered to introduce it. I delivered it to Mr. Torvinen February 19th.

MR. REID: We have now many other states with similar statutes that allow service from another state upon people. This would allow us to have lawsuits in this state regarding things done improperly in this State, rather than go to other states with these suits.

MR. TORVINEN: Meisner vs. Meisner: A married man in California left

his wife and came here for over six months. He filed suit for divorce here and his wife sued in California. He ignored the suit in California thinking the court could take care of the property, etc. She got a default, ex parte order for alimony. She came over and asked for Summary Judgment. The court said the California Court still had jurisdiction and he was stuck for \$300 a month alimony from here on out.

MR. MCDONALD: This has been given more attention than just this one case. This case pointed it up, however. It was Harry Swanson who first brought this to my attention. We followed most closely the language of Kansas, because there are a series of cases decided there, particularly to "e", and just a few isolated cases in California.

I think this gives us the protection we need.

AB 736: Alters procedure where plaintiff's security for court costs is required.

MR. REID: This is a provision for nonresident plaintiff's cost bond. Our statute is not clear as to what happens after he files this. There was a default to one of my clients. The court said that this was not right. This bill says he must file and then wait ten days for an answer. All he got was a copy of the judgment which was for \$600,000.

MR. REID: I move Do Pass AB 736.

MR. LOWMAN: I second the motion.

MOTION CARRIED UNANIMOUSLY.

AB 158: Revises Uniform Reciprocal Enforcement of Support Act.

MR. BRYAN: The amendments are in for AB 158 and should be back on your desk tomorrow morning.

AB 605: Requires casualty insurance companies to insure for medical malpractice.

MR. REID: I move to Indefinitely Postpone AB 605.

MR. BRYAN: I second the motion.

MOTION CARRIED WITH MR. SWACKHAMER NOT VOTING.

AB 239: Provides that indigent who later acquires financial ability must reimburse for county hospitalization.

MR. SWACKHAMER: I move Do Pass AB 239.

MR. PRINCE: I second the motion.

MOTION CARRIED UNANIMOUSLY.

AB 221: Permits Board of Pharmacy to make immediately effective regulations concerning dangerous drugs.

MR. KEAN: The Federal list of drugs is not very clear. However, I am not going to object if you want to go ahead with this.

MR. TORVINEN: I have an amendment to 454.220, dangerous drugs defined. (Quoted the amendment to take care of this.)

MR. BRYAN: That is not an amendment to AB 221.

MR. KEAN: I say let's forget the whole thing.

MR. LOWMAN: I move Do Pass AB 221.

MR. REID: Mr. Kean, why are you against the Board of Pharmacy?

MR. KEAN: Because of my personal experiences with them.

MR. LOWMAN: Let's go get a bill to cover the situation.

MR. SWACKHAMER: Why is this notice and hearing being taken out?

MR. LOWMAN: When we had the committee hearing, the Board of Pharmacy representative, Mr. Locke, and also the police officers testified that new drugs keep coming on the market and that they should be able to control them immediately. Example, THC.

MR. TORVINEN: They would have to comply with the Administrative Procedures Act.

MR. SWACKHAMER: There may be a legitimate manufacturer of drugs and the State Board would make an arbitrary ruling. That I don't agree with. What would they do then? Where could they go to get a hearing?

MR. BRYAN: There are two problems: One concerns the legitimate manufacturer of chemicals. The other problem arises when we amend this section. The Board could convene tomorrow afternoon and list various chemicals as prohibitive. Then a guy could be found guilty of possession before he even knew there was a law against that drug.

MR. LOWMAN: What we intended wasn't it Mr. Davis, was to make these rulings effective immediately, to be followed by a hearing?

Doesn't it say that after this he will get the hearing?

MR. BRYAN: (Read from NRS) Said the Board must give notice of such use.

I would not see any reason why there could not be some type of notice before they make this classification.

MR. DAVIS: This particular thing came out of that case in Sparks, involving Asmador. They did not have the authority to make an immediate determination on that.

MR. BRYAN: Would it not be possible for the State Board to announce a hearing before their ruling?

MR. TORVINEN: If 221 has merit, it would have to be on the assumption that the Board could make an emergency order or something. We can't approach it the way 221 does.

MR. BRYAN: I think the industry should have the right to come in and say you have made a mistake. This drug is not dangerous.

MR. KEAN: The Board of Pharmacy is just a group of pharmacists that got together.

MR. TORVINEN: No, it is not. It is an official Board.

MR. LOWMAN: We are assuming that members of the industry have reviewed these bills. There have been no objections to 221 that I know of.

MR. SWACKHAMER: I think with a simple amendment we could make this a much better bill.

MR. BRYAN: Let's follow Fry's suggestion and let it be handled by the Administrative Procedures Act.

MR. TORVINEN: I am afraid if we pass it, it will throw it back in the Administrative Procedures Act.

MR. DAVIS: That Act makes a provision for an emergency action. It was our intent to put it in there.

MR. SWACKHAMER: Then I withdraw my objections right now.

MR. BRYAN: (Read the emergency regulation of the Administrative Procedures Act from NRS). The regulation will be effective for 120 days, so why do we need this?

MR. LOWMAN: Mr. Bryan, if you want to bring an amendment to the floor, I will support it.

MR. LOWMAN: I move Do Pass AB 221.

MR. PRINCE! I second the motion.

MOTION CARRIED WITH KEAN AND BRYAN VOTING NO.

AB 725: Extends provisions for personal service of process outside of State.

MR. REID: I move Do Pass AB 725.

MR. BRYAN: I second the motion.

MOTION CARRIED UNANIMOUSLY.

AB 223: Provides punishment for unlawful supplying of, and raises second offense penalty for possession of, dangerous drug.

MR. LOWMAN: This has not been reported out because we expected to make these three bills all into one act. This is a "catch-all" that says "if we have not covered everything this covers it."

MR. DAVIS: I don't think we have a definite law on dangerous drugs.

MR. SWACKHAMER: Didn't that man from Washington, D.C. tell us they were getting more jail time in states with lesser penalties?

MR. FRY: I suggest we conform this to the narcotics penalties. 1 to 6 on the first and then the second goes up. This bill should also be amended.

MR. TORVINEN: This is a bill I opposed. Derivatives of heroin have medical use, but marijuana and LSD have no legitimate use, so if you find them they are illicit drugs on the market. Reducing pills contain some of these drugs, so if a kid gives his friend one of these reducing pills he is guilty of a felony.

I agree that LSD should be a felony. There is no proved medical use

for LSD. I think there is a logical difference between drugs that have medical uses and drugs that do not.

The district attorneys agree they would not want to prosecute in these cases.

MR. REID: But they don't have to prosecute them, do they?

MR. TORVINEN: What the district attorneys wanted was a bill that said particularly that amphetamine in its raw crystalline form is a felony. In this form it is not used medically.

My objection to this is that it takes in ordinary, widely used drugs.

MR. LOWMAN: It says "unlawful."

MR. BRYAN: How about "any person who unlawfully possesses?"

MR. REID: I move Do Pass AB 223 with an amendment deleting words "supplies or gives away" in lines 3 and 4.

MR. PRINCE: I second the motion.
MOTION CARRIED.

MR. TORVINEN: I hereby ask Mr. Fry to take care of getting this amendment for us, along with the one he wants conforming the penalties.

MR. DAVIS: Will "supplies or gives away" be a misdemeanor?

MR. REID: I would accept that.

MR. TORVINE: It is a misdemeanor now.

MR. REID: Mr. Chairman, here are the amendments you asked me to get for AB 384 and AB 315.

MR. TORVINEN: We will meet tomorrow afternoon and tomorrow evening.

Meeting was adjourned at 4:50.

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AB 554 ke

AB 663 ke

AB 725 DP

AB 736 DP

AB 158 K5

AB 605 ke

AB 239 DP

AB 221 DP

AB 223-DP as as →

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