

Bill No.: S.100

Public Assemblies

WITNESSES:

Peter Langrock, Esquire  
Middlebury, Vermont

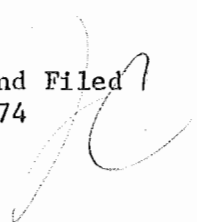
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SENATE JUDICIARY COMMITTEE

Meeting of February 8, 1974

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SENATE JUDICIARY COMMITTEE  
Meeting of February 8, 1974

A meeting of the Senate Judiciary Committee was held on February 8, 1974 at 10:20 A.M. in Room 5 of the State House in Montpelier, Vermont. The purpose of the meeting was to discuss S.100 relating to public assemblies. Members present were:

|                                 |                       |
|---------------------------------|-----------------------|
| Sen. T. Garry Buckley, Chairman | Sen. William T. Doyle |
| Sen. Robert Bloomer             | Sen. Graham Newell    |
| Sen. Russell Niquette           | Sen. Robert Daniels   |

Also present were Peter Langrock, Esquire; Kimberly Cheney, Attorney General and Sen. John O'Brien.

CHAIRMAN BUCKLEY: I do not know where we want to start with this. We were taken through the bill yesterday by Kim Cheney and Art Gibb. Art went through section by section just to tell us how he understood it. Kim was able to bore in a little more on the problem and tell us why he thought this was the solution. We had some people in from the American Civil Liberties Union who were here a week ago for it and who have raised seven or eight constitutional questions in the meantime. I cannot speak for all of the committee, but I think that everyone recognized that there is a problem and it ought to be solved and it should be solved in this session. It just seemed because of their fear of the constitutional problems and their effort to satisfy that, they may have over-reacted and left the matter of the First Amendment up to the whims of the town clerks. Perhaps you could give us some background, Peter.

PETER LANGROCK, ESQUIRE  
MIDDLEBURY, VERMONT

I was involved in the drafting committee of this act right from the start. The principal draftsman was Millard Rude who was Professor at the University of Texas and is now the head of the American Law School Organization. The bill was originally thought of as a reaction to a comment in Judge Black's opinion in the Gregory Case where he said what this country needs is a well-drafted matter to deal with the constitutional problems of free speech and assemblies in a narrowly drawn bill. I do not have a direct quote from the Gregory opinion, but that was the basic background of why the commissioners undertook it. In looking at the overall picture, we found that there are certain basic constitutional precepts which we have to deal with. One is the question of free speech, the doctrine of higher restraint. One cannot restrain speech before it is made. One cannot prevent people whether it is the constitutional right to speak or the constitutional right to assemble, and these are well worthy of protection all the way through. But there is a real problem that exists with some of the abuses. In the course of our developing the bill we worked with many advisors and found out that our biggest problem - we are talking about metropolitan police forces - was in North Dakota where in a weekend some young people descended upon a town and tore the town apart, much like our rock session last summer. We also dealt with the administrators' problems in Washington, D. C. We found that the one thing which was important in these things was to get negotiations going. There is no way to outlaw a mob-like activity. It was so important, especially in major demonstrations, to get the community tied

into a way to develop with the community leaders and the assembly leaders. We went over and around in many, many sessions as to what type of assemblies should be covered. We came to the conclusion that you really can't break down this whole field very effectively. There are too many cross-over situations. The basic concept in the bill is that everybody is entitled to a permit. There is no prohibition against a permit, but that a community has the right to regulate it at a reasonable basis. This is much like Act 250 criteria. We have in this bill picked up the criteria with which the administrators could effectively deal and negotiate. It is not crime to have an exercise of your free speech without a permit under the ordinary circumstances. This is not a requirement that you have to have a permit before you can speak because that would fall apart on the face of the state's constitution. If you come in and get a permit, it will help you. It will give you certain additional protections. The protections basically are that he who applies for the permit has first right to the street. For example, if the Boy Scouts wanted a parade down main street, they would apply for a permit. If the Young Socialist League wanted to go down the same day, the police then would have a responsibility to protect the Boy Scouts, or it could be reversed. It does away with the protection of minor infractions, such as the jaywalking type of concept. As long as you are within the terms of the permit, you can block traffic. It is a crime to block traffic, but if you have a permit and it is done appropriately you are excused from this conduct whereas if you don't have the permit then the law enforcement officers can enforce the traffic ordinance, etc. What we found that everybody needed was a mechanism for instant negotiations, some vehicle needed to be developed. There is the known exception to this

whole area, and this goes back to Judge Holme's language, "In the clear and present danger", and that test has been modified in Supreme Court decisions and different languages used in the act which I think ties in with the constitutional standards at present. But there is a possibility of restraining languages or obscenities when there is substantial harm that can be adverted to the public health, safety and welfare. We felt this could not be entrusted to a local official, either constitutionally or otherwise; so the only person who can give the power to assembly, the only person who can abridge the constitutional rights under this test is a court. We have a situation where the administrator cannot deny a permit. He can grant permits. He can say, "Look, the street is busy on Tuesday, but you can have it on Wednesday, or you can have it with so many marshalls as long as you keep it under control." But he cannot say, "No, we don't like you; we don't like your speech; we don't let Republicans in this town; we don't let hippies in this town or we don't let music." But they can say, "We'll let you in, but here are the rules of the game." And if the situation is such that it is so dangerous that even under these conditions that a permit cannot be granted, then it is up to him to go to the court and he at this point would get whatever constitutional protection the court would give him. But, again, it is just a mechanism for doing this.

CHAIRMAN BUCKLEY: It is up to him or the administrator?

MR. LANGROCK: The administrator to do this. It gives a presumption towards free speech and the exercise of the constitutional rights. It gives room for negotiations. It gives guidelines to be used in the preparation and it gives recourse to a community which is really threatened.

SEN. NIQUETTE: What kind of a suit would an administrator go into court with?

MR. LANGROCK: There is a specific process to get application under this act.

SEN. NIQUETTE: But he can't deny him of this right?

MR. LANGROCK: No, he cannot deny a permit, but if he says this is so dangerous he goes then in effect for an injunctive relief that says you cannot hold an assembly for these reasons.

CHAIRMAN BUCKLEY: But it is the court that makes the final decision?

MR. LANGROCK: That is right. If, on the other hand, the conditions are too restrictive, then obviously there would be an immediate administrative review and a court review on the act. That is the basics of the act.

CHAIRMAN BUCKLEY: That is the best explanation we have had so far, Peter. You obviously know what you are talking about and you obviously know what you are trying to do. It is an excellent explanation. But it tends to confuse me in that I have to assume the problem was so difficult constitutionally otherwise that you practically decided to word it backwards. What you are doing is really the reverse then?

MR. LANGROCK: Yes, I think that is a fair statement. It is almost impossible to find a statute controlling public assemblies which has ever been upheld.

Take the situation of the Rutland Fair and the number of people per "johns". You can't have different standards for the Rutland Fair than you would have for a rock concert. We find that the equal protection arguments keep coming into these areas. We find that we don't need a set of rigid standards. What we need is room for negotiation when they come up so they can do it, and this statute will give it to us. How do you get a statute that is constitutionally acceptable by negotiations? You can't say you have to negotiate before you speak. But you can say if you negotiate, we will protect you and we will protect you from the heckler's veto; we will give you first priority. If you don't want this protection, you still have your constitutional rights, but we then don't have any responsibility to owe you any extra duties, and you damn well better not spit on the sidewalk!

CHAIRMAN BUCKLEY: This brings me to my question now, Peter. The whole thrust of the assembly act in Vermont from a practical standpoint and the whole thing which has bothered us so far is that a great number of people - it wouldn't make any difference whether it was a rock or a Bible conference, etc. - a great large number of people are congregating in an open meadow, if you will, without adequate facilities to take care of them. This has really been the problem. I hate to be provincial about this, but what this does is try to set up an act that could be used in every state; and if it holds up, perhaps it could be and maybe that is the better approach. But the problem we are facing here in the type of state we have is a tremendously large group of people congregating without any real way to control their safety as well as the safety of the people who are around them.

MR. LANGROCK: There is one other area, too. We do have in Vermont, for example, the demonstrators in front of the Post Office Building in Burlington. But let's take the big grouping in the meadow situation right now. How does this act deal with that? First of all, are the people acting in good faith? You have the situation where they want to have this gathering. We then have the machinery where they can make a permit, which we have none now. We can then construct negotiations as to how many toilets are you going to have, how many people you expect, what type of maintenance, what are you doing for drinking water, etc. There is no way you can pass a law saying you can't have five or more people in a meadow unless you have an equal protection situation all over.

CHAIRMAN BUCKLEY: Let's just talk about that for a minute. Suppose we just said not more than 1,000 people shall assemble outside without a permit from the Commissioner of Public Safety and then listed the criteria. That means for the Rutland Fair they would have to get a permit. What is wrong with that?

MR. LANGROCK: You are making it a mandatory permit before they assemble, and that is a prior restraint to the right of assembly.

CHAIRMAN BUCKLEY: Did you get into the police power at all?

MR. LANGROCK: We certainly did.

CHAIRMAN BUCKLEY: What does that say? Don't the people of Rutland or the people of Newport or the people of Barton have any civil rights?

MR. LANGROCK: Certainly, but it depends upon the exercise of your standards. There may well be cases where people can legitimately gather with 1,000 or more which are constitutionally protected. For instance, the Washington situation they have spontaneous demonstrations.

CHAIRMAN BUCKLEY: But we are talking about Vermont.

MR. LANGROCK: Suppose the President is impeached and there is immediate response. There are constitutional rights for people to discuss this matter. You can't just simply say that it is illegal to assemble without a permit, and I don't care what number you use. It may be useful in certain instances and it may not. But the point I am trying to make is that this bill does that. There are two parts. One is that it says anybody who wants to assemble and it is legitimate, then we have an avenue for them. Let's assume we have somebody who doesn't give a damn about a permit. There is a provision in this bill where the administrator when he has knowledge of this he can request them to file an application, and this is as far as we can go and still be constitutional. They can't make them do this, but they can request it of them. If he does not do that, then the officer has a right to apply to a court to intercede. Of course, due to the fact that he won't file for a permit is a substantial thing to make a judge think very carefully about the assembly.

CHAIRMAN BUCKLEY: You are bringing it right back to where I was. If he doesn't file for the permit, the judge is going to deprive him of his rights under the First Amendment. Under the police power the judge won't let him have the permit.

MR. LANGROCK: You are saying if you don't get a permit it is a crime.

CHAIRMAN BUCKLEY: But you say it may or may not be. You take each case separately. You feel constitutionally that is the way you have to do it.

MR. LANGROCK: You see, you can make a mandatory permit at any point. But if you don't say that as a result this gives special police authority or that it is a crime; so the question is, you make it a crime one way or another to speak or to assemble without a permit, and that is the constitutional problem. Our statute does not do that. That is the narrow tight line which I think draws the skin on the constitutional lock and which protects it, but effectively. It solves the same problems you want to solve, but only it gives more flexibility to it. The problem of the other type of criminal statute is that not only does it run into constitutional problems, but then it comes into a real tough drafting problem also. You want to draw the line at 1,000; you want to draw the line at 500 or 200. You want to exempt a church service or you want to exempt public meetings.

CHAIRMAN BUCKLEY: Let's assume you took a figure of 2,000. To be practical, any rock concert of less than 2,000 is probably not going to cause a horrendous situation, even in a meadow. It is probably not going to cause an upside down situation in Vermont. You must have had some discussion as to police powers.

MR. LANGROCK: The thing is this, that 2,000 in a meadow is substantially different from 2,000 on the fairgrounds from a practical standpoint.

If you use the mandatory situation of 2,000, you then have the criteria for which the permit could be used which must be equally brought across. Of course, there is always the possibility you could say you can't have 2,000 people without first having a permit.

CHAIRMAN BUCKLEY: We even discussed this without adequate seating facilities, which would take the fairgrounds off the hook.

MR. LANGROCK: It might or might not, because the seating facilities were intended to be used for that point. It seems to me with that type of approach you are accomplishing much less than you accomplish with this act. The real beauty of this act is that it leaves a mechanism to deal with problems that we haven't thought about and might never arise. It may be an assembly of 50 people which is really effecting the situation. It might be a religious group. You could get into a Black Panther, Hells Angels or Klu Klux Klan gathering, These things aren't in Vermont, but three weeks from tomorrow we could have a group who would be violently oriented, and they might be a much smaller group. We might well want to have this type of tool.

CHAIRMAN BUCKLEY: The thing that bothers me about it, Peter, is if they put this law on the books that we might assume next summer we might not have any problems and the law is never used. Nobody ever gets a permit. Bob Loomis has got some friends who want to come up from Long Island and have a rock concert, and they are going into West Rutland. All of a sudden, bang, up comes the law. It has been on our books for a year and a half or

two years and never been used. But all of a sudden some administrator is out there handing Bob a request for a permit. Aren't they going to say this is a fine piece of legal machinery, but it is obviously geared at just one thing? You are going to use it when you want to use it.

MR. LANGROCK: It goes both ways. It is only used when the applicant wants to use it or when the town wants to use it. When else do you want to use it? Let's take a statute that runs between 50 and 2,000 as the extreme. If you have a statute that specifies 50 people, then you have a situation where every church service and every funeral, unless you exempt them, and you can go on down through the categories. It is not illegal under this act to participate, so you just ignore the great bulk of the situation. But when you get a situation where there is potential for problems and Bob, as a good attorney, would say I have a rock concert so let's go get the police protection so I know where I stand. By the same token, if you aren't that type of guy, then there is a procedure in this bill that would say they would have to come in and talk to them, and if you don't come in and talk to us we are going to court and prevent your concert.

CHAIRMAN BUCKLEY: I understand what you are getting at, but the people up north who had this problem came to you with a bellyache and you are treating them for cancer. You are going to take care of everything.

MR. LANGROCK: This bill was introduced before because we felt this would deal with problems before they arose and this would prevent the barn door notion. What happened last summer we can't deal with. But we only look toward problems like that in the future. That is one piece of legislation.

If we look for the types of potential problems which we have investigated and have seen across the country - last summer the rock concert caused a problem in the Northeast Kingdom.

SEN. NIQUETTE: Pete, you are a practicing attorney. Let's assume that somebody comes from New York who is a promoter for a rock concert and he goes to see Peter Langrock in Middlebury. Number one, would you recommend to him that he get a permit? And if he did, why would you?

MR. LANGROCK: Yes, absolutely, and I would for this reason. I want the protections that go with it.

SEN. NIQUETTE: What protections go with it?

MR. LANGROCK: Suppose we have an assembly up there and my promoters are long-haired people, the hippie type, and we get a group of hard hats who say they have a right to assemble there too. At this point I have the reservation and I have also got the priority of the police to protect that assembly.

SEN. NIQUETTE: You probably won't need the police to protect you, will you? If you have from 5,000 to 25,000, you are probably required to supply your own police.

MR. LANGROCK: Let's take one situation at a time. If we are talking about 25,000, yes. But if we have the advantage of that or because there are so many areas of protection negotiations, and I don't want to give

the health standards problems, then I am going to need good publicity. I am going to need cooperation from the local officials; I am going to need traffic control; and I am going to need to sit down and discuss planning. For all of these reasons I am going to want to negotiate with these people, and this is the best deal for negotiations. There is no question on the 25,000 figure. If it is going to be a 250-member meeting which he wants to bring in, you know a highly specialized group situation where there might be some tension, then, again, I would apply. As a matter of fact, I can't conceive of an instance of public assembly where there is a potential social problem where I wouldn't want to use this because I am responsible, and any responsible person would want to use this vehicle. I would not use it for a Republican picnic in Goshen because there is no problem and no need to.

CHAIRMAN BUCKLEY: You wouldn't get 50 people anyway so it wouldn't be covered by the services.

SEN. NIQUETTE: If you do not apply for a permit and somebody says there is some kind of a threat over your head and that the administrator has a right, if he wishes, to go to court and try to stop you. That's in the act, too.

MR. LANGROCK: Let's take this situation. I am not a responsible person and I want a convention to encourage the use of heroin addiction. We are going to have all of the heroin addicts in New York City come up to the town of Goshen, and I don't give a damn about the law. I am not acting responsibly. The first thing you do is that the administrator says, "I think

this guy is organizing this." I get feedback that there are four guys who are putting this together and he sends out notices requesting them to file an application.

SEN. NIQUETTE: You mean to tell them they should?

MR. LANGROCK: That is right.

CHAIRMAN BUCKLEY: We are not demanding, but requesting.

MR. LANGROCK: If you move the next step further, either they become responsible and come in and negotiate in good faith and try to work this out or they say to hell with it. At this point society needs some protection, and at this point the administrator can go to the courts and get whatever protection the courts feel appropriate in that case.

SEN. NIQUETTE: Why does society at that particular point need protection? We don't know what is going to happen.

MR. LANGROCK: The higher restraint concept is one which is a very limited one and this act vests it only in the court. If you were to take the situation where there were 20,000 heroin addicts coming to Goshen and you couldn't have them, the court might then impose certain restrictions to protect the public health, safety and welfare and say they would allow no more than 500 people to assemble in that area. You can't fashion a solution to the situation right now. In other words, what you need here is a good

man administrating it and eventually a judiciary to put such control which are constitutionally permissable, which are very, very narrow.

SEN. NIQUETTE: In Judge Holme's decision on clear and present danger.....

CHAIRMAN BUCKLEY: He was talking about a fire in a theatre, wasn't he?

MR. LANGROCK: That is now very substantial harm that can't be avoided to the public.

SEN. NIQUETTE: Danger has to be present and evident probably.

MR. LANGROCK: In most cases it would not be clear and there would be no way to prevent this.

CHAIRMAN BUCKLEY: Let's get right down to the nuts and bolts of it. If you don't want to allow some heroin addicts in Goshen, the administrator is going to court and the court will issue an injunction and then the administrator will be in a position where he can harrass these people by peeking out from under the robes of the Judge, and they won't come in. That is what happens, isn't it?

SEN. NIQUETTE: Mr. Chairman, how is he going to issue an injunction? On what?

SEN. DANIELS: On Who?

CHAIRMAN BUCKLEY: He believes there are these four people.

MR. LANGROCK: The problem is extremely difficult. There are two choices you can do. Maybe he can't issue an injunction and maybe he can't find anybody to serve papers on. But the only choice you have in legislation is to try and give tools to prevent the harm from happening or to punish people after it has occurred; and we have already got tools for that.

SEN. BLOOMER: Let's use your assembly again, Peter, and let's assume that 10,000 heroin addicts come up from New York. They don't know anything about whether anybody has a permit or anything else. As I understand it, they have a perfect right to assemble. How are you going to arrest them? If 10,000 or 20,000 show up, what are you going to say, you have no right to do this?

MR. LANGROCK: You can't change the constitutional rights of the addicts by this act. The act explicitly recognizes that part of it. It gives better tools to work with the situation. You can at this point stop the people. Instead of stopping them in Goshen, you can stop them in Rutland.

SEN. BLOOMER: Do you mean to stop every car?

MR. LANGROCK: You could have somebody at a gas station handing out leaflets. You can communicate information to these people. You can advertise in some papers, put it on the radio, etc. You can say it is going to be limited to 500 people. There is a provision for those who don't comply with a permit and who has knowledge of such to a criminal

penalty.

SEN. NIQUETTE: It looks to me like we are passing a law and we know the law is no good and that it isn't enforceable and we know it is illegal, but we do hope they will live up to it.

MR. LANGROCK: Russ, you are over-reacting. What you are really saying is right. What this act is is a form of negotiation. We found in preparing this act that there is no way to answer those problems constitutionally. You are trying to develop a very much needed forum. The fact of the matter is that this act was on the books and there are 10,000 addicts going to Goshen and you have something to deal with this problem.

CHAIRMAN BUCKLEY: What you are saying is that you are going to be able to communicate with them, hopefully.

MR. LANGROCK: And this is what every person we have talked to has said what was needed. What the act does is gives certain benefits to those who comply and provides for certain penalties for those who blatantly disregard the permit.

SEN. NIQUETTE: Do we have any other civil rights acts?

MR. LANGROCK: As far as the civil rights aspect of this act - I am a past president of the ACLU of Vermont and I worked hard with Sandy Rosen who is one of the better constitutional lawyers. He said as far as he was concerned there was no such thing as a constitutional public assembly act.

Basically, even the American Civil Liberties Union nationally recognizes this.

CHAIRMAN BUCKLEY: Even under Act 250 you couldn't assemble above 2,500 feet. The environment is so tender up there you could irreplaceable damage.

SEN. NEWELL: Mr. Chairman, the permit part is what is making a block with me. If you apply for the permit, you get certain benefits. You also said they get a priority or get police protection. What bothers me is that if you are saying with a permit a group is assured of police protection, then doesn't it follow that without a permit they would have received lesser police protection? Where are our equal rights under the law?

MR. LANGROCK: The problem is with the heckler's veto situation. If a group of people want to peacefully assemble and exercise their views - traditionally, you could put it in terms of the hippie versus the hard hat or one religious group against another - that particular point is addressed to the heckler's veto.

CHAIRMAN BUCKLEY: This is another constitutional matter when you get involved with religious groups.

MR. LANGROCK: Let's take the situation where these people peacefully assemble. Their rights should be protected. Another group wishes to assemble, and they have constitutional rights, but they are competing with each other because they are heckling, such as they guy who stands up

and shouts noisy obscenities. Without this act each side has equal right to that space. This act sets a priority. It says if one group is going to be shut up, it is the group who is invading upon those who have the permit. We felt this was within the police power, that the rights for free speech are not absolute. They have to be governed in reasonable conditions and those people who follow this are entitled to the first line of protection.

CHAIRMAN BUCKLEY: This brings me to my point. What you are saying is if you play ball with us, we will play ball with you.

MR. LANGROCK: That is right.

CHAIRMAN BUCKLEY: What the people up in the Northeast Kingdom were saying is that they don't want any more damn rock concerts; so you go ahead and put together a philosophical giant which is going to put these people in a position where they are going to have rock concerts whether they want them or not.

MR. LANGROCK: Let me state an answer to that. First of all, this act was not designed to handle that.

CHAIRMAN BUCKLEY: Then, why are we talking about it here? That is our problem.

MR. LANGROCK: This act was introduced prior to that.

CHAIRMAN BUCKLEY: But that is the problem we think we have.

SEN. NIQUETTE: What about private property?

MR. LANGROCK: It deals with private property, too, under certain circumstances. It gets into the definition. Let me respond to this. The problem is that maybe the people in the Northeast Kingdom just can't prohibit that.

CHAIRMAN BUCKLEY: I think they can.

MR. LANGROCK: That is another act, and I would dare say if you prohibit rock concerts.....

CHAIRMAN BUCKLEY: No, not rock concerts. I am talking about huge public assemblies in a meadow. I don't care if it is a Bible conference.

MR. LANGROCK: The only problem I see with that is that you want to outlaw more than 2,000 people. That is a bandaid to a problem which already exists. But you then run into the problems with the fairgrounds.

CHAIRMAN BUCKLEY: Give them a permit. If a guy says you gave the Rutland Fairground a permit for a fair and we want to have a rock concert, tell him to take it down to the Rutland Fairground and we will give them a permit.

MR. LANGROCK: This act helps you more along that line than what you are suggesting. If you give the fair a permit for more than 2,000, then you

have to give a rock concert a permit.

CHAIRMAN BUCKLEY: If they go to a good fairground, we will give them one.

MR. LANGROCK: What is a good fairground? That has to be an objective determination and not a subjective one. If you are talking about units of sanitation per person, then you will find that most rock concerts have more units of sanitation per person than most fairgrounds.

CHAIRMAN BUCKLEY: That isn't what the papers have indicated. They said that was the best fertilized meadow up there they had had in a long time.

MR. LANGROCK: That was a gate problem. You can't react to that one situation.

CHAIRMAN BUCKLEY: The people in the Northeast Kingdom sure have, and they are looking for us to do something about it.

MR. LANGROCK: I have seen towns where 90 percent belonged to one political party.

SEN. NIQUETTE: Peter, is Vermont the only state trying this act?

MR. LANGROCK: No. Oklahoma has passed it. In fact, they passed it last year when the act was relatively new.

SEN. NIQUETTE: How many other states have passed it?

MR. LANGROCK: In the vicinity of 17 to 20.

SEN. NIQUETTE: They have some kind of an act?

MR. LANGROCK: No, they have some kind of legislation. This was introduced last session here. It has been introduced in other legislatures with the same situation. Oklahoma passed it within a matter of a week or something. They jumped the guns.

SEN. NIQUETTE: Is it similar to this?

MR. LANGROCK: It is identical. It is a uniform act.

CHAIRMAN BUCKLEY: They could get 90,000 people in some of the meadows they have.

MR. LANGROCK: I appreciate your problem. I hope you won't react to this act as saying this doesn't answer my problem to the rock concert in toto. It may help in part and therefore we should ignore it. I think this is a good piece of legislation standing on its own. We found throughout the country that these things pop up. Zap, in North Dakota was an example.

CHAIRMAN BUCKLEY: If we stick this on the books and I advise my friends in the Northeast Kingdom that we have taken care of their problem and Willy off the pickle boat decides he is going to have a rock concert next year, do you know who is going to have the problem? All the smart hippie has to do is say I have come up here to communicate with you so when do I sit down

and negotiate with you.

MR. LANGROCK: Right now you haven't even got that.

CHAIRMAN BUCKLEY: The first time they don't give him what he wants they will tell him to run down to the red brick court house and check that out with the judge.

MR. LANGROCK: This is not the way this happens, though, Garry.

SEN. BLOOMER: Let me give you a hypothetical case. Let's assume I lease a hunk of property I own in West Rutland to somebody who wants to put on a project and I care about is leasing the property. It is going to give me a couple thousand bucks, and I say go ahead; it is nothing to me. Then, he goes to the town clerk and says he is going to have a religious conference up there and Mick Jagger is coming up and going to sing a lot of religious songs. They are going to advertise it in the New York Times and say they don't want more than 2,000 people and they are going to comply with everything. He puts it in the New York Times and 20,000 show up. Who is the criminal? They have the permit and don't want more than 2,000, but in they come.

MR. LANGROCK: The problem is that really there is no advantage in a law which makes people criminals. What you want to do is prevent 20,000 people from coming up. What you do under this act is say they have the permit, but they can't advertise in the New York Times because that will attract more than 20,000. He will agree to it and say it is a reasonable restriction.

If the guy is going to negotiate in good faith, then he will do it. This is the purpose of it and it has worked in a lot of places. There are ways of limiting publicity. If you want room to negotiate legitimately, this gives it up.

CHAIRMAN BUCKLEY: What do you do about the case Bob mentions? What if he doesn't advertise and 20,000 people do show up? What do you do about it?

MR. LANGROCK: You live with it, and not matter what act you put on the books you are going to have to live with it. You just can't legislate some problems. But what you can do is try to give some tools to prevent this from happening.

CHAIRMAN BUCKLEY: But in the Northeast Kingdom after the Commissioner of Public Safety has given them a permit for 5,000 people, after they have estimated their 5,000 there they could put a roadblock up and turn them back. They could say under the police power they couldn't take any more people.

MR. LANGROCK: In Washington, D. C. we had 14,000 people in stadiums for violating protesting situations.

CHAIRMAN BUCKLEY: Then, what you are saying is there is nothing you can do?

MR. LANGROCK: I happen to think that most people will operate in good faith if you give them the tools to work with. If you have a revolution, then you

have one. And you will have people who will ignore laws; this is the case. That doesn't mean you shouldn't give tools to work with for people who want to obey laws.

CHAIRMAN BUCKLEY: Maybe you are right.

MR. LANGROCK: This is 98 percent of the cases. The practical experience is that men do this day in and day out for a living, from promoters, from officials in Washington, D. C. and New York to North Dakota. This is giving them a forum to negotiate and giving them some tools to work with. Then, we can start handling these problems. I don't understand much about this rock concert in the Northeast Kingdom. I understand there were some negotiations which were informal and part of the problem was that they weren't very intelligently done. They had fences in the wrong places, etc. I can't guarantee you that you won't have problems because of bad negotiations, but even bad negotiations call for more hope than none. This offers a definite vehicle and a definite procedure and it gives a greater deal of protection to these towns than they have now. It also gives this universly throughout the state and it is geared with flexibility.

CHAIRMAN BUCKLEY: But don't you know what the people in the Northeast Kingdom are going to do with this act? They are going to try to harrass the promoter if they can, and their major premise is going to be, "We don't want you." They claim the Attorney General says he has no power and the Governor says he does. But these people take the position that they don't want 18,00 or 20,000 people congregating up there and loading the hospitals, stabbings, etc.

I guess what you are saying is that they are going to have to have them whether they want them or not.

MR. LANGROCK: No. You see, you are putting it in the extremes. Garry, if they are going to say that they don't ever want anything up there where young people are going to listen to rock music, then you have a problem. This allows that type of negotiation to happen. How do you prevent the thing imperically? How do you prevent a rock concert from happening? Under this there is criteria to be met. What are you going to do about sanitation? What are you going to do about publicity? What are you going to do about traffic control? What are you going to do about police protection? What are you going to do about local marshalls? What are you going to do about food? These are the things you meet one at a time. I can't tell you how to keep 20,000 people out of a town, and nobody can for that matter.

CHAIRMAN BUCKLEY: They go on the basic premise that they can't handle 20,000 people. There is no criteria you can put together that will make it possible for them to handle that size of a crowd.

MR. LANGROCK: I think that is a legitimate concern and under this act if you can't get a promoter to come into a situation where he will agree to limit it so you can keep this under control, then you have a very substantial harm and from there you go to the court.

SEN. NIQUETTE: Let's assume, Peter, that you acquire your permit and there are about 35 conditions and I have my crowd of 20,000 assembled and violate every single one of those conditions in the permit. What does the act

provide for violations?

MR. LANGROCK: It says a criminal penalty. They get 30 days or a \$100.00 fine. It is a misdemeanor.

CHAIRMAN BUCKLEY: Our consumer fraud acts provide for five times as much as that.

MR. LANGROCK: I am not married to that. I think 30 days is a long time when you are talking about this type of situation.

CHAIRMAN BUCKLEY: What about 30 days and \$5,000.00?

MR. LANGROCK: That is not going to help the people in the town. Or, at least it is not going to change the fertilization of the soil. The point is that this act is geared to try and prevent problems and not to sweep up afterwards.

CHAIRMAN BUCKLEY: If you and I are going to negotiate, we are going to mentally play with each other.

MR. LANGROCK: I think the 30 days in jail has really more sting than you think it would. It is like syphilis; you'll get over it.

SEN. NEWELL: Mr. Chairman, we haven't discussed one area of this, and this is where I did receive complaints, even when I was in Europe. There were constituents of mine who own cottages at Willoughby Lake. If you will

notice on the map, Willoughby Lake is some 10 to 15 miles away from this particular location of last summer's festival. This isn't going to deal with the complaints my constituents made to me who own property at Willoughby Lake. The night after the concert, or whatever this was, up in Morgan, my friends had complained to me that there was an absolute night of lawlessness. Dozens and dozens of youngsters trespassing, petty thievery and absolute rioting all along Route 5. They called the State Police but the State Police just couldn't come because they were so busy in Morgan at the actual point of this festival. This act isn't going to deal with that at all. As Senator Boylan was saying the other day, it seems to me we have got to enforce the laws we have, which were not being enforced up at Willoughby Lake, as I understand it. I don't think this bill addresses itself at all to that sort of a situation.

MR. LANGROCK: It doesn't except it might help prevent an assembly from getting out of hand where there are so many that law enforcement officers can't handle them. (CHANGE TAPE)

With that actual background, people would have that much more information to base another one on. It was just informal; there were no teeth. This formalizes the negotiations, and if you can't there is a potential resolution to a way of doing it through the courts.

CHAIRMAN BUCKLEY: I think we are generally agreed. You made a beautiful presentation. I understand your problem. It is the best explanation I have had of this bill. If I questioned you, it is because I am trying to learn something and I am not taking an adversary position. Would it be a fair statement if I said this isn't going to really solve the problem

in the Northeast Kingdom, that I couldn't go back to those people and say S.100 takes care of your problem?

MR. LANGROCK: Senator, if you were to say your problem could be solved in part, I would agree with you. If you go back and say this helps deal with the situation and this is a better tool that gives you more to deal with, then I would understand you. But if you say this solves your situation, obviously not. I suggest to you that there is no legislation with which you can solve the problem; and if the legislature could solve it we wouldn't have it. We have it across the country. Every piece of legislation that has been tried has failed constitutionally or just practically speaking. Even in Washington they still arrested 15,000 people.

CHAIRMAN BUCKLEY: Peter, let's forget about the uniform law for a minute. Let's assume we pass this to put the proper tools in somebodys' box, but suppose you put together a piece of legislation where you cite the police powers of the state and that fact that we have had situations which have gotten out of hand and say that any group which wishes to assemble publicly outside that exceeds 1,500 people has to get a permit from the Commissioner of Public Safety and have to adhere to rules and regulations promulgated by him through the Administrative Procedures Act. If the situation that Bob was talking about came up, I grant you that we would still have a problem. But Colonel Corcoran's boys could go to these people and say, "Listen, we think it is going to be over 1,500 people and forget it, you are not going to have it unless you can meet this criteria." The guy would say that is unconstitutional. Colonel Corcoran would say, "Fine, take me to the United States Supreme Court." But in the meantime, you aren't going to have that

rock festival. Does that help the people in the Northeast Kingdom?

MR. LANGROCK: No.

CHAIRMAN BUCKLEY: It doesn't? Why not?

MR. LANGROCK: In the first place, what you are suggesting is an act which ignores the constitutional rights.

CHAIRMAN BUCKLEY: I didn't ask for a constitutional opinion. I said, would that help the people in the Northeast Kingdom?

MR. LANGROCK: It depends upon whom the promoter is. If a guy agrees to a permit, then the signature is the premise and there is no problem. Granted, a guy who is coming to it may exercise his right of free speech in some way which would violate the permit. That could be an offense for the criminal prosecution. But nobody has suggested that you could make it a crime to advertise. But what you can say is, "If you want our help, if you want to deal with this negotiation in a good faith way, then you will adhere by our terms and this is what the provisions are."

SEN. DANIELS: What if a condition is imposed that the promoter cannot advertise and the promoter says that is unfair and I am not going to agree to the conditions of the permit. At that point the administrator can go to court and get an injunction against him?

MR. LANGROCK: No. At that point the applicant can file an appeal.

SEN. DANIELS: Suppose he says to hell with the whole damn thing and that he is going to have it anyway?

MR. LANGROCK: If he says that, you then have the uncooperative individual who is breaking the law.

SEN. DANIELS: He isn't breaking the law. He just doesn't want to negotiate because he thinks the town has been unreasonable.

MR. LANGROCK: He has the right to go outside the act at any time. He doesn't have to negotiate.

SEN. DANIELS: He doesn't negotiate, but the town thinks according to the language here that there is a reasonable likelihood that the assembly will harm public health or safety. Every town in the Northeast Kingdom is going to think that about every rock concert, so-called.

CHAIRMAN BUCKLEY: That is the point I am trying to make.

MR. LANGROCK: The court will give the town protection.

SEN. DANIELS: The promoter starts to negotiate with them and the negotiations break down. Then, what? The town goes to court to get an injunction imposing these conditions or banning the assembly?

MR. LANGROCK: First of all, if he comes into the permit situation by applying in the first place, then the permit binds him.

SEN. DANIELS: What can the court do constitutionally?

MR. LANGROCK: I can't tell you factually because it is a case where maybe banning the assembly all together might protect the potential harm of the townspeople. Ultimately, the only person who can prohibit by higher restraint is the court.

SEN. DANIELS: I don't think that a reasonable likelihood of substantially harming public health or safety is going to be a very limiting condition that is going to happen to every such proposal that comes along the pike. Is reasonable likelihood constitutionally sound language?

MR. LANGROCK: We believe it is because this is the language that evolved out the clear and present danger test.

SEN. DANIELS: It is certainly a lot broader in my mind.

CHAIRMAN BUCKLEY: Peter, what do you do about a fellow who lives in the city and leases a piece of land in the Northeast Kingdom, 100 acres or so, and announces he is going to have "Pete's Party"? He isn't even in Vermont. You don't have any jurisdiction over him at this point except for his leasing the land. It is a rock concert and the tickets are sold in New York. How are you going to negotiate with that fellow?

MR. LANGROCK: There is no way, no matter what you pass.

CHAIRMAN BUCKLEY: But under the theory I am operating under when you get into a situation like that the Commissioner of Public Safety could say, "Look, we think there are going to be over 2,000 people there; and if we are right and we have 2,002 there isn't going to be any performance."

MR. LANGROCK: The problem that comes about is not what is right or wrong, but the hard cold facts. The question is, how is the best tool available going to prevent there being 20,000 people showing up? What this does is gives them machinery that says before this thing happens, before there are 20,000 people marching up here, let's sit down and talk. It doesn't do it in an unconstitutional manner, but puts it on a permissive basis. It maintains by a very delicate balance its constitutionality, and it gives as much protection as it can to the community.

SEN. BLOOMER: Peter, do you think this could be approached on the basis of health and sanitation and say that for every assembly, whether it be the ball game, the Rutland Fair or the rock festival in Holland or whatever, that the laws apply equally to every assembly? You would have to have so many bathrooms per people attending.

MR. LANGROCK: We have that now under certain health regulations and this act contemplates the use of that. But health and sanitation is only one avenue. This act tries to meet the problems squarely and use all of the criteria; and that is a good one.

SEN. BLOOMER: I should think if anybody wanted to enforce it I don't see anything to prohibit having all of the regulations set up.

MR. LANGROCK: Again, there is the problem of the overflow, and nobody gains in those things.

CHAIRMAN BUCKLEY: Even the promoter takes a licking.

MR. LANGROCK: That is right. What you want is a situation where you have a way of getting all of the resources and the community together. You call the Commissioner of Public Safety. You call on the Health Department and the Water Resources Department. This is strictly the machinery to do that. This is really the summation of the act. We found by talking to the best knowledgeable people in the country that we could that what they wanted was a tool to negotiate, that 98 percent of the time people wanted to prevent these riots. The promoters wanted to prevent them and they wanted to prevent problems. Basically, people really want free speech and the right to assemble although sometimes there is some hesitation about it.

CHAIRMAN BUCKLEY: Then, the only problem the promoters have had is just too damn many people coming to the performances.

MR. LANGROCK: And lack of knowledge. What happens is you have a guy who has a lot of dough, rents this thing and has a great idea. It happens in a little town and there is no machinery and they panic and over-react, and you wind up in a chaos situation. This act sets up that machinery for these resources. Let's talk about these terms and negotiate.

SEN. BLOOMER: New Hampshire handles it fairly well. They get state police from Massachusetts and Vermont when they are having a big deal over there. They are well organized.

MR. LANGROCK: One of the keys to this is notice. It does give you some mechanical areas to handle the procedural due process, which is important. But, basically, it is a form of negotiation with procedural rules for handling those negotiations.

SEN. NIQUETTE: Has this bill been introduced in New Hampshire, Massachusetts and New York?

MR. LANGROCK: I can't honestly tell you that.

CHAIRMAN BUCKLEY: We have spent two days on this. How do you feel about it? What do you think we ought to do with it?

SEN. NIQUETTE: I don't know. I would like to have some time to think it over.

CHAIRMAN BUCKLEY: This is the best explanation we have had that was presented to us this morning.

MR. LANGROCK: Let me make one little plea for this bill. For me, singlehandedly, to commit you in this most delicate area of law, I would say that I have personally lived with this act for two years. I worked as hard at drafting it as I could and listened to as many experts as I could. We are dealing in an area which nobody really has had any success dealing

with. We get complaints from the right that we ought to throw these guys in jail and from the left that we aren't protecting their constitutional rights. We have tried to develop a very delicately balanced action. I really think that if this is on the books and two years from a problem arises we have the machinery to deal with it. Right now we have no machinery. We have a tremendous impetus to react to a single problem, and I am sure it is a serious problem. I appreciate the political realities and the personal realities of the Northeast Kingdom. When I was working on this bill, I wasn't working on something to react to that situation. I was trying to develop something whereby we could stimulate and encourage free speech, free discussion, assembly and the rights of people to do their own thing, but that we could do so with minimizing the inconvenience to the public. We gave some kind of tool where these kinds of conflicts there would be a mechanism for developing a balance. I think this act is really trying to allow - if it works, it will be a real positive virtue. It doesn't handle all of the problems and it is not a solution, but I think it is a damn good piece of legislation.

CHAIRMAN BUCKLEY: You don't think it is a step backwards?

MR. LANGROCK: No. I think it is a major step forward. This sets up some criteria which I think are rational ones. It gives guidance in an area which is needed. It is an act which I think will be held constitutional. I am sympathetic to the situation. The reality is that if a guy is not cooperating under the permit system then he is being unreasonable. A judge's finding of substantial harm is much more available. It gives room for adjustment to the process, and I believe it will work.

CHAIRMAN BUCKLEY: How would you feel about a mandatory 10 days?

MR. LANGROCK: With regards to a mandatory jail sentence, if you are talking about the kid who jumped into the pond because he has been drinking too much, you may not want the mandatory 10 days. I think you have to trust your courts with the discretion.

CHAIRMAN BUCKLEY: You have it in your uniform criminal code.

SEN. BLOOMER: Peter, you said you were past president of the American Civil Liberties Union and you are in favor of this. The ACLU criticizes this. I find it a little difficult to reconcile your statements and their statements.

MR. LANGROCK: What they are saying is that any activity beforehand that there is no way to try and protect society before it happens and that you can only punish afterwards. I say that higher restraint doesn't go that far. This is the constitutional guideline we have used, that a man can always say I have a right absolutely to speak and I don't need to go for a permit. If I want to go into this voluntarily, I can. He is wrong in the second one. The second one indicates the burden is placed upon the applicant. There are no criminal sanctions for speech. Sandy Rosen told me that basically he was against any public assembly act because it could have some abuses, but he also said this was as close to it as we were going to find.

SEN. DANIELS: In the bill in Section 13 which establishes time limits to respond to a permit, suppose knowledge of the impending assembly only comes to the town authority less than three or five days before the scheduled time.

MR. LANGROCK: As I remember this, this deals with emergency situations. As long as there is cooperation, there is no problem.

SEN. DANIELS: The people didn't apply for a permit and the authorities have to request five days before the date of the assembly to apply for a permit and they shall deliver the permit within three days before the assembly and publicize the conditions.

CHAIRMAN BUCKLEY: Isn't that an awful short time frame?

MR. LANGROCK: The time frame situation is always difficult. There is no problem when you have a promotion three months away, but there is a problem when you have to deal with these situations on short notice, such as impeachment, etc.

SEN. DANIELS: As I read the bill, the permit procedure does not operate if you don't have three days to deliver it to somebody that you believe to be organizing an assembly.

MR. LANGROCK: You can't force him into it.

SEN. DANIELS: Then, there isn't any permit procedure at all? This is the clause where the permit officer is issuing a permit that wasn't requested with conditions for the holding of the assembly which was never negotiated.

MR. LANGROCK: He can't do that in three days.

SEN. DANIELS: If it is less than three days, apparently he hasn't got the power to do it. If the permit officer has less than three days' notice that something is going to happen, then the bill doesn't operate at all.

MR. LANGROCK: It doesn't operate if there is no cooperation.

SEN. NIQUETTE: There is no law for the first three days.

SEN. DANIELS: Incidentally, when you can't find the organizers and you want to get an injunction who do you serve?

MR. LANGROCK: That is a problem I can't answer.

SEN. DANIELS: Is an injunction effective if you can't find any organizer, but here are the people flocking to the assembly? Do you post notice?

MR. LANGROCK: That is whatever the court says.

SEN. DANIELS: The next problem that was mentioned in Mr. Harrison's statement was the authority of the highest ranking police officer if there is trouble in an assembly and he finds he can't take measures to avoid the danger, then he can cancel the assembly. Can he do that even if the trouble is being caused by the hecklers and the opponents of the assembly?

MR. LANGROCK: If it gets to the point that there are just too many hecklers, yes.

SEN. DANIELS: Because we know there have been in various parts of the country where the authorities are really against the people who are organizing the assembly. If the opponents then raise a ruckus, the authorities come in and really punish the victims.

MR. LANGROCK: If there are going to be abuses, at this point, whether you have the act or not, their conduct is going to go in a certain direction. If a person refuses to disperse himself at this point, he can test the qualities of the police conduct. If he doesn't disperse and he is wrong, then he would be in violation.

SEN. DANIELS: I have one final question. With regard to those mass arrests in Washington a couple of years ago, what was your opinion of the legality of that, and how does that bear on what this act does on a state level?

MR. LANGROCK: The thing the act does on the state level is give you some tools to work with beforehand. With regards to my feeling about the arrests, I think there were some tremendously outraged people and there were some abuses of the police power. Of course, that is my personal judgement.

SEN. DANIELS: If a similar situation were reproduced here and similar abuses of the police power occurred, do you think this act on the books makes it any harder to correct the abuses of the police power?

MR. LANGROCK: No, not at all. As a matter of fact, this gives some specific directions where police power should be used.

KIMBERLY B. CHENEY  
ATTORNEY GENERAL

I think the issue there was arrest without probable cause, which this doesn't deal with.

SEN. BLOOMER: Do you think it would be constitutional if we wrote the bill putting in exceptions? This act shall not apply to football games, church affairs, etc.

MR. LANGROCK: I don't think you need it. This is already permissive.

SEN. BLOOMER: Somebody mentioned that perhaps we should except from the act certain activities such as football games, church affairs, etc.

MR. LANGROCK: I would think that would be a mistake because it wouldn't accomplish anything.

CHAIRMAN BUCKLEY: I have an observation that I would like to make. I lost sight of the fact that this uniform public defense act was introduced prior to the problem that existed in the Northeast Kingdom. It was an act that was produced without any pointing to any special problem. I thought after you had your summer conference and we studied this rock festival problem that we were going to try to do something to correct that particular situation in Vermont. I am not being critical of what Peter has produced, and I think I understand it now. But I am satisfied that it doesn't do what the people in the Northeast Kingdom want or solve the problem they have.

I am also satisfied that I am not sure you can totally solve the problem they have. But, frankly, I am more interested in working on the problem that they had than I am what happens if Dr. Martin Luther King gets shot in Montpelier. I grant that such a thing might happen here.

MR. LANGROCK: Burning the building at Middlebury College was a serious thing.

CHAIRMAN BUCKLEY: Do you suppose they would have gotten a permit for that? How do you legislate against burning a building? Would you talk about it?

MR. LANGROCK: I think that was an outgrowth of a demonstration which carried too far and it was a demonstration that the local authorities had no way to deal with it. With this they could possibly have dealt with it and had some control.

CHAIRMAN BUCKLEY: But what I am saying is I think there is more probability next summer that we are going to have rock festival problems than we are burning buildings at Middlebury. This doesn't address itself directly to the people who have been most specific in their objection.

MR. CHENEY: I am curious as to why you feel that way. I think it would have covered the situation.

SEN. BLOOMER: This would have covered the situation?

MR. CHENEY: I think if this had been law that we would have been able to prevent the Holland situation.

CHAIRMAN BUCKLEY: How would you have done it?

MR. CHENEY: Approximately two months before the thing was to take place - everybody knew Mac which was the peculiarity of this situation, because they knew who the promoter was. It was rumored that he was going to have another party. The thing took place Labor Day and along about the first of August he admitted to the selectmen of Holland that yes he was going to do it and it was going to be at Abbott's farm. At that point he could have been asked to get a permit. Some of the amendments I talked about yesterday would require him to give to the town all of his promotional material.

CHAIRMAN BUCKLEY: I see, it would require him.

MR. LANGROCK: His amendments make the law unconstitutional. The first page of the proposed amendments takes the whole permissiveness out of this and makes it mandatory. Then, the whole concept goes down the drain. This act is so delicately balanced. We have fought this type of approach over and over and considered it. The saving grace of this whole act is that this procedure will work 98 percent of the time without any problems.

CHAIRMAN BUCKLEY: Don't you think a court might take the position that, as you stated, civil rights goes both ways?

MR. LANGROCK: Yes.

CHAIRMAN BUCKLEY: Don't you think a court would accept on its face that 30,000 people in the town of Morgan deprives those people of their civil rights and that under the police power you ought to be able to do something to prevent them from being there?

MR. LANGROCK: Yes, I think so. For instance, anybody who would want to get 30,000 in the town of Morgan there would be this test of substantial harm to the public health and safety and you could get an injunction; so I think you can deal with that. But there comes a line. What is true in Burlington is different in Morgan.

SEN. NIQUETTE: Then, you would deny the permit?

MR. LANGROCK: No, in that case the administrator would get injunctive relief if they couldn't agree on how many or what the conditions were. If they couldn't get an agreement between the promoter and the town in Morgan for something that would be satisfactory to the town of Morgan,.....

CHAIRMAN BUCKLEY: Peter, I don't want to destroy what you have done, but if I start to touch that bill to address myself to what I think is the problem in the Northeast Kingdom, then what I have done is destroyed hours and hours of hard work on your part. I don't think your bill really goes to the rock festival problem.

MR. LANGROCK: Yes, it does.

CHAIRMAN BUCKLEY: Well, it doesn't go as far as I want it to go.

MR. LANGROCK: That may be, but that should be a separate bill. Leave this in for all of the other problems that come about because of the fact that it is a tool and because of the fact when your other bill gets ruled unconstitutionally you will still have this one.

CHAIRMAN BUCKLEY: In the meantime, there won't be any rock festivals.

MR. LANGROCK: Maybe not.

CHAIRMAN BUCKLEY: I hate to have the facist come out in me, but I feel very strongly for those people. They have rights, too.

MR. LANGROCK: But this act calls for a balancing of those. Look, If I represent the town of Salisbury and they want to put 20,000 people in the town of Salisbury and there is no compromise, then I have no doubt in my mind that I can convince a judge that this presents a substantial harm to public health and safety of the townspeople.

CHAIRMAN BUCKLEY: But when you put in \$100.00 and 30 days for Mac, I have to take the position that.....

MR. LANGROCK: Wait a minute. Don't forget you have a court order against this guy right now and you have the power of test. That is the real power right here. What we are talking about now is a condition of the permit.

CHAIRMAN BUCKLEY: You are more liberal than I am, I think, and you are constitutionally on firmer grounds. But I don't think you are as interested in the problem that the people in Holland have as I am.

MR. LANGROCK: I would want to make sure that the balancing is done fairly and squarely.

CHAIRMAN BUCKLEY: But, you know, you never really get a balance. If the scale was to tip at all, I think you would tip it for the people who would want to have the assembly and I would be tempted to tip it for the people who didn't want it. That is what I am trying to say. It never really balances.

MR. CHENEY: I would agree, Mr. Chairman, that without some amendment this bill would not solve the Holland problem because one of the problems there was getting any kind of real projection as to how many people were going to show up. During the course of the hearings we held, almost all the police officers had no idea how much advertising was being done. There were rumors circulating around that they were advertising on all Boston and New York radio stations and underground newspapers, etc. If we knew they were advertising, we could have probably predicted a lot better as to how many people were going to turn up because the promoter under estimated the amount of people.

CHAIRMAN BUCKLEY: I don't think he wants a riot, either, does he?

MR. CHENEY: No, but I think he would under estimate the number of people to reduce the number of conditions the town would put on him. As far as the public nuisance is concerned, how do you prove something is going to happen before it happens? You don't have any solid information to base anything on.

That is why I did suggest an amendment. I haven't spent as much time as Peter has on this. I agree with you, Mr. Chairman. I want to see this bill worked to control the Holland situation. It appears to me as close as I can think of that it would be a constitutional bill and I don't think my amendments would distort it. As far as I am concerned, there is no way any community can constitutionally prevent this kind of thing from happening.

CHAIRMAN BUCKLEY: I think what Peter has is good for everything except for what is bothering me. I think if you amend Peter's bill that you will have nothing.

MR. LANGROCK: As I said, this bill was introduced before and I think it is good all the way along the line. Once you start making any notice mandatory, you will then have a permit for free speech which then gets back to the Nazi type concept where you have to have a permit for everything. As soon as you put in here "shall notify", the whole constitutional issue goes right out the window. Forget about it. As soon as you talk about getting injunctions against public nuisances in the future which exercise the constitutional rights, forget about it. There is only one area where the constitution will allow you a higher restraint, and that is the whole clear and present danger which is now termed in this act under better constitutional language of a reasonable probability of substantial harm to public health and safety.

CHAIRMAN BUCKLEY: I propose to use what you are talking about. I would arbitrarily say that over 2,000 in an outside assembly constitutes a clear and present danger.

SEN. DANIELS: That could then be subject to negotiating conditions I presume.

CHAIRMAN BUCKLEY: Yes, the Commissioner of Public Safety, or whoever, could get the permit. I don't say you can't have over 2,000, but I say you will not have over 2,000 without a permit. Then, I would propose to exempt the fairs, etc.

SEN. BLOOMER: Then, you may have another problem, Garry.

SEN. DANIELS: All we really do with the 2,000 is to mandate the permit officer to take action if the organizers don't come to him.

CHAIRMAN BUCKLEY: It is just against the law to have over 2,000 people assembled outdoors in this state without a permit.

MR. LANGROCK: Who is the criminal?

CHAIRMAN BUCKLEY: Who is the criminal in your bill, Peter?

MR. LANGROCK: The person who willfully violates a provision of the act.

CHAIRMAN BUCKLEY: What do you do?

MR. LANGROCK: If he has knowingly violated a provision of the permit he gets 30 days or if he has violated an order of the court he would have a contempt charge against him, which could be very, very substantial.

This could be six months in jail or a large fine. If you have another problem, deal with that and let this method be superimposed to be able to use it.

SEN. DANIELS: I don't see why your machinery here doesn't take care of the Holland situation if the town authorities see the festival coming. If no one applies for a permit, then they take advantage of this initiative clause and they devise conditions. The conditions may have to deal with health and sanitation, organization and even limitations on the number attending. They put these out to the people and negotiate if they can. If they can't negotiate, then they go to court and say since they haven't agreed to these conditions and it looks like they are going to have 10 times as many people, then give us an injunction.

MR. LANGROCK: That is right.

CHAIRMAN BUCKLEY: Where is your proof that they are going to have 10 times as many? If we don't have 10 times as many and you put these conditions on us, are you going to reimburse us for what you have put us through?

MR. LANGROCK: You are still talking negotiations now. Of course, one of the things I said practically speaking is that the court is not going to be very friendly in protecting the constitutional rights of somebody who is going to violate them. Very imperically, if they guy is not going to deal with this matter and he is just going to ignore the courts, then the court can draw certain presumptions from it.

CHAIRMAN BUCKLEY: But his lawyer is going into court and say the burden is on the town and the state to show that this man is going to have 10 times as many as he said.

MR. LANGROCK: Once the lawyer is there, you start negotiating again.

CHAIRMAN BUCKLEY: Then, they are going to have the rock festival the way you have written it. There isn't any way the judge can preclude it?

MR. LANGROCK: Yes, he can. He can always make a finding that there is a reasonable probability of substantial harm to the public health and safety. He feels the only way to avoid that substantial harm is to prevent the guy from holding the festival, and if the guy goes ahead with the festival then he is liable to be found in contempt of the court.

MR. CHENEY: In the Holland case the health requirements were met for a reasonable number of people. They screwed up because they fenced off all the toilet facilities because you had to pay \$10.00 to get into the area where the toilet facilities were housed.

CHAIRMAN BUCKLEY: That is reasonable, isn't it?

MR. CHENEY: It was reasonable except the way they structured it they had a fence around one portion of the field and allowed free admission to the rest of the field. Anybody could come into the free admission portion and hear the music and they only had two toilets in the field, which were rapidly overloaded and didn't work. That was just poor planning. The health aspect

of that situation could have been corrected by not making them pay \$10.00 to go to the toilets.

CHAIRMAN BUCKLEY: The other people weren't Mac's guests. They weren't paying and just happened to be there.

MR. CHENEY: The other problem of the Holland festival was not knowing except by some kind of seat of the pants judgement how many people were going to show up. They had no hard evidence of that fact. I think if we have the notice provision and knew what the advertising was that we could then go to the judge and say they have advertised all over the place and prior experience elsewhere shows that when you have this many people we think these conditions are reasonable for this permit.

MR. LANGROCK: You do that anyhow.

CHAIRMAN BUCKLEY: Can we leave it that you and the Attorney General will at least discuss the great damage he proposes to do to your bill because without some agreement on the part of you then we have raised another problem here. At some point I am going to discuss with the committee the possibility of a committee bill that will zero in on what I think is the problem up there. I don't think the bill ought to be tampered with because we will be doing in 10 minutes what you have done in 10 months.

MR. CHENEY: I would agree, but if we could conceive of a bill that would handle the rock problem situation that would be good. If we pass S.100, it would give us an additional tool to work with. I think maybe working through

with Peter that we could hand in one bill that would cover a variety of things that we can't see that might happen and still cover the rock festival situation at the same time.

MR. LANGROCK: I think the bill does handle the rock problem situation 90 percent. I agree with you wholeheartedly, that we shouldn't try to tamper with this to handle the situation because the bill is geared not in that direction. I am perfectly willing to see another bill to handle the rock festivals with the other 10 percent. But don't try bringing the rock concert concept into this bill because you could potentially destroy the whole constitutional basis for it. This is a delicate piece of legislation from the constitutional standpoint. It seems to me that the bill really would handle a lot of things and I think you have other problems when you focus in on that 10 percent for the rock concerts.

CHAIRMAN BUCKLEY: You have covered the whole broad spectrum and you have tried to make it constitutional. What I would propose to do is zero in on something and try to make that constitutional. The people in the Northeast Kingdom are screaming up there that they want something done.

MR. CHENEY: Peter, it would seem to me you would have the same constitutional problems with a bill outlawing rock festivals whether you are dealing with a specific or general area.

MR. LANGROCK: I don't think you can deal with them constitutionally. The American Civil Liberties Union says you can't have any act which is constitutional regulating public assemblies.

MR. CHENEY: The reason I asked the question is that it seems to me that this is a delicately balanced protection of various rights and maybe we could work something in that would take care of the rock festival problems that would constitutionally work within the same framework.

MR. LANGROCK: Let's be honest with this bill. It is just not geared to handle the rock concert problems. On the same token, it is a damn good tool that will solve 90 percent of your problems up there if you had had it on the books.

CHAIRMAN BUCKLEY: It might have.

MR. LANGROCK: I would go further and say it would have. If you had had good people administrating it you wouldn't have had the tension there. I would say it would have handled it the way the bill is now.

CHAIRMAN BUCKLEY: There is no way you could have handled that crowd up there.

MR. LANGROCK: You might have limited the conditions beforehand. Let's clear the issue. We have S.100 for the negotiations and you need another bill for prohibiting rock festivals and you should look at that individually.

MR. CHENEY: The trouble with a prohibition scheme is that it would precisely be thrown out the window I think. (End of Tape)

Meeting adjourned.

Transcribed by Joan E. Clack

S. 100

1 Introduced by Senator Gibb of Addison County and Senator Alden of  
 2 Windsor County

3 Referred to Committee on  
 4 Subject: Internal security and public safety; public assembly  
 5 Sponsor's statement of purpose: It is the purpose of this bill to  
 6 provide for the regulation of public assemblies.

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| Own Vote |    |                            | Legislative Vote |    |      |
|----------|----|----------------------------|------------------|----|------|
| Yes      | No |                            | Yes              | No | Date |
|          |    | 1st Reading                |                  |    |      |
|          |    | Committee Report           |                  |    |      |
|          |    | 2nd Reading                |                  |    |      |
|          |    | 3rd Reading                |                  |    |      |
|          |    | Amended See Calendar Dated |                  |    |      |
|          |    | Amended See Journal Dated  |                  |    |      |
|          |    | " " " "                    |                  |    |      |
|          |    | Recommitted                |                  |    |      |
|          |    | Ordered to Lie             |                  |    |      |
|          |    | Withdrawn                  |                  |    |      |

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AN ACT RELATING TO PUBLIC ASSEMBLIES  
 It is hereby enacted by the General Assembly of the State of Vermont:

1 (3) "permit reviewing authority" means the board of three or more  
2 officials designated by the governing body of a political subdivision  
3 to hear appeals from decisions of the permit officer under this act;

4 (4) "person" means an individual, corporation, government, govern-  
5 mental subdivision or agency, business trust, estate, trust, partner-  
6 ship or association, or any other legal entity;

7 (5) "political subdivision" means a city, town, village, or other  
8 incorporated place if the public assembly is or will be held therein  
9 and means the county, if the public assembly is or will be held outside  
10 an incorporated place;

11 (6) "public assembly" means a gathering in a public place of 50  
12 or more individuals which the general public is permitted to attend,  
13 with or without an admission charge;

14 (7) "public place" means

15 (A) a place with respect to which the federal or state govern-  
16 ment, a political subdivision, or governmental agency normally has  
17 authority to control or prohibit use by the general public or

18 (B) a place with respect to which a private person permits use  
19 by the general public.

20 Sec. 3. Permit; When to Obtain

21 (a) If there is no reasonable likelihood that a public assembly will  
22 substantially harm the public health or safety or substantially impair  
23 normal use of a public place, a person who intends to hold this kind  
24 of public assembly need not secure a permit but may apply for a permit  
25 to receive the protection and assistance afforded by this act.

1 (6) the general nature of the public assembly and the arrangements  
2 made to protect the public health and safety during the conduct of the  
3 public assembly, including arrangements with respect to traffic direc-  
4 tion, crowd control and sanitation facilities;

5 (7) the name of any other political subdivision to which applica-  
6 tion has been or will be made to hold the public assembly; and

7 (8) any additional information the applicant wishes to furnish.

8 Sec. 6. Time for Filing Application

9 (a) An application for a permit to hold a public assembly shall be  
10 filed at least nine days before the day on which the public assembly  
11 is to be held.

12 (b) However, if the public assembly is to be held within nine days  
13 after a specific and unanticipated event or announcement of public  
14 importance and in response to it, the application shall be filed within  
15 24 hours after the event or announcement and at least 36 hours before  
16 the public assembly is to be held.

17 (c) The permit officer may receive and act upon an application to  
18 hold a public assembly even though the application was not filed in time.

19 Sec. 7. Receipt of Application

20 (a) Upon receipt of an application for a permit to hold a public as-  
21 sembly, the permit officer shall note the time of filing on the appli-  
22 cation and shall forthwith mail or otherwise deliver a copy of the ap-  
23 plication to the principal officers of the applicant named in the appli-  
24 cation.

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1 (b) The permit officer shall give the applicant immediate notice  
2 in writing of his action on the application.

3 (c) A permit officer is deemed to have granted a permit on the terms  
4 requested, if:

5 (1) an application is filed under Section 6(a) and the officer  
6 does not issue a permit or proceed under Section 11 within 10 days  
7 after the application is filed or not less than 4 days before the public  
8 assembly is to be held, whichever is earlier, or

9 (2) an application is filed under Section 6(b) and the officer  
10 does not issue a permit or proceed under Section 11 within 24 hours  
11 after the application is filed or not less than 18 hours before the  
12 public assembly is to be held, whichever is earlier.

13 (d) By agreement in writing the applicant and the permit officer may  
14 modify the time requirements of subsection (c).

15 Sec. 9. Criteria for Imposing Conditions on Permit

16 (a) If there is a reasonable likelihood that a public assembly will  
17 substantially harm the public health or safety or substantially impair  
18 normal use of a public place, the permit officer shall grant the permit  
19 upon conditions reasonably necessary to avoid substantial harm to the  
20 public health or safety and to minimize the effect of or avoid substan-  
21 tial impairment of normal use of a public place.

22 (b) In determining whether to grant a permit only upon compliance  
23 with conditions, the permit officer shall consider whether:

24 (1) a permit has been granted to others to hold a public assembly  
25 at the same time in the same or a nearby public place;

1 (12) there is substantial potential for material injury to property  
2 at or near the public place;

3 (13) there is a special relationship between the subject of the  
4 public assembly and the public place that makes it reasonable to impose  
5 extraordinary burdens on the public place affected and the individuals  
6 residing or present in nearby areas; and

7 (14) the imposition of conditions on the permit will materially  
8 interfere with the reasonable and lawful objectives of the public  
9 assembly.

10 Sec. 10. Permissible Conditions

11 (a) In granting a permit the permit officer may impose reasonable  
12 conditions as to the time, place, and manner of holding the public  
13 assembly so as to avoid substantial harm to the public health or safety  
14 and to minimize the effect of or avoid substantial impairment of the  
15 normal use of a public place. These conditions may include designating  
16 a different time or place; restricting duration of the public assembly;  
17 requiring installation of temporary sanitation facilities; requiring  
18 provision of emergency medical services; requiring the applicant to  
19 establish crowd control procedures; requiring trained parade marshals;  
20 and requiring the applicant to designate representatives to maintain  
21 liaison with law enforcement officers during the public assembly to  
22 facilitate dealing with emergencies that may arise.

23 (b) If there is an admission charge, the permit officer may impose  
24 a condition requiring the person holding the public assembly to re-  
25 imburse the political subdivision for the cost of additional law

1 the invalid provision or application, and for this purpose the pro-  
2 visions of this act are severable.

3 Sec. 27. Short Title

4 This act may be cited as the "Uniform Public Assembly Act".

5 Sec. 28. This act shall take effect July 1, 1973.

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