

S.100, Public Assemblies

WITNESSES:

Kimberly B. Cheney  
Attorney General

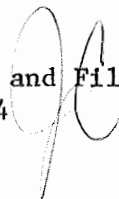
David Harrison  
Executive Director  
American Civil Liberties Union

SENATE JUDICIARY COMMITTEE

Meeting of March 12, 1974

Tape Cleared

Cards Updated and Filed  
March 14, 1974

A handwritten signature or set of initials, possibly 'JC', written in dark ink. The signature is positioned to the right of the typed text 'Cards Updated and Filed March 14, 1974'.

SENATE JUDICIARY COMMITTEE

Meeting of March 12, 1974

A meeting of the Senate Judiciary Committee was held on March 12, 1974 in Room 5 of the State House, Montpelier, Vermont at noon. The purpose of the meeting was to discuss S.100 relating to public assemblies. Members present were:

Sen. T. Garry Buckley, Chairman	Sen. Robert Daniels
Sen. Robert Bloomer	Sen. Graham Newell
Sen. William Doyle	

Also present were Kimberly B. Cheney, Attorney General and David Harrison, Executive Director, American Civil Liberties Union.

SEN. BUCKLEY: I think probably the reason that is in there, if it will hold, is that there ain't going to be any more rock festivals in the Northeast Kingdom. That's what they're saying or that they are going to have to be very well run if they do have them.

MR. CHENEY: I think it means the latter. I think you could have one under this if adequate--like the one they had at Sugarbush. They had almost 5,000 there.

SEN. BLOOMER: This is an affirmative duty, is it not, on the promotor to affirmatively show that the assembly will not substantially impair the provision of fire, police protection and medical and other essential services. And I don't think anyone can show that unless he brings in whole squad of doctors and medical corpsmen, Hell's Angels for the

police protection, etc.

MR. CHENEY: These are conditions which the Commissioner would impose upon the permit. He would say, look, you can have a permit to hold this but you have to have three fire trucks, eighteen additional deputies and five doctors, depending upon the size of the crowd.

SEN. DANIELS: You can re-word it--the permit officer impose conditions to insure that arrangements will be made to provide necessary fire, police, medical and other services so as not to substantially impair the...

MR. CHENEY: The thrust of No. 1 is that the attendees--the patrons... No 1. says the patrons have to have adequate stuff and the new No. 4 says that the public can't be deprived of these things.

SEN. DANIELS: I think that you are drawing all the firemen and police force to control this assembly and then you are denuded of services elsewhere.

MR. CHENEY: Or right in that area. Yes, that is the idea. No. 4 looks to continue services for the general public.

SEN. DANIELS: The obligations on the promotor is not simply that he is not going to be able to require services, but the obligation to make provision to take care of the overruling volume to create some sort of

private police force for the occasion so that he doesn't ... Is that what we want to do?

SEN. BUCKLEY: I think that is what you have to do. At least that's what the experience up there proved.

SEN. DANIELS: OK. Then I would like to see it worded...

MR. CHENEY: On another scale is that if the Commissioner puts on such burdensome provisions that the promotor says, well, I just can't function, then he can use Section 8 and hope into court and say, judge this guy is infringing my First Amendment rights by these unreasonable conditions and then the judge decides what is reasonable.

SEN. DANIELS: Well, No. 4 sounds like the assembly, per se, is not going to be something so big as to impair services where I think what we are really trying to say is that we want to make sure that they have provided for these services so that they don't over-burden what's available to the general public.

SEN. BUCKLEY: There is the over-burdening factor, as Holland pointed out to us--they had the outhouse in the paid admission section and it wasn't available to the general public who were there. Well, this set up should be running through that that says, if you are going to have toilet facilities, you're going to have to have them for everybody,

even if you haven't paid to get in, you can't lock them out because we don't want an extra thousand people poo-pooing all over the countryside.

SEN. BLOOMER: I don't think you can do that, Garry. How about at a ballgame. The guy is out looking through the fence. Have you got to supply a latrine for him?

SEN. BUCKLEY: There are usually very few key-holders compared to what they had--I don't know how many thousands they had, but...

SEN. BLOOMER: I don't see how you can compel a private individual to provide sanitary facilities to the general public which is not a part of his assembly.

SEN. BUCKLEY: Well, you're going to let them into the lot. What are you going to do.

SEN. BLOOMER: He might let them on the lot--he would say keep out, but you know how they go. I don't think that would hold water myself. What do you think?

MR. CHENEY: I think in the Holland situation with some decent planning they would have required that a number of latrines be outside the parking lot that people could use. I mean these were patrons...

SEN. BLOOMER: Patrons--I can understand it. But we are talking about the general public--making a private individual provide sanitary facilities for the general public who did not pay to get in.

SEN. BUCKLEY: I think you would have to provide for easy accessibility.

MR. CHENEY: I agree with that. I think under No. 1 the Commissioner if he gets interference with this thing would require them to set it up so that the people could use the latrines. Maybe the working in No. 4 could be changed around a little bit, but I think the substance of that is important because what it says is that you can't require a town to devote all its fire, police and medical facilities to the assembly and leave the rest of the public unprotected at that time. I think the language--I'm open for suggestions--but I think it covers what's needed there.

SEN. DANIELS: OK. What do you think, Dave?

MR. HARRISON: I want to say that I think it should be clear that all these things are negotiable--as a vessel if the promotor thinks he is being unduly demanded to put in 40 latrines, the town or the state are still going to have to prove to the judge if the promotor refuses on this basis that the permit should be denied. It can't be denied unless it is proved that there is imminent danger to health and safety. So I think you should look at that whole area as a negotiable thing. I still

don't think it should be worded quite that openly, but it is still a negotiable matter.

SEN. BUCKLEY: One of two things is going to happen. The promotor is going to feel that he is harrassed or he is going to feel that he isn't harrassed. If he feels he's harrassed, he's going to the red brick courthouse and take it up with the judge and the Commissioner knows it so he can either get along and get his permit, or he will end up in court.

MR. HARRISON: And the commissioner who refuses to give the permit has to show the court why not. And the court, if it's a lack of three Johns, isn't going to allow them to fail to grant the permit for this reason. There is one other question that we have and that's in the bonding procedure. It may be a little uncertain whether--I don't think you have any more right to have Mac pay for the bad bills at the Newport Hospital than you do the Rutland Fair to pay for the bills of somebody who breaks their foot at the Rutland Fair, goes to the Rutland Hospital and then deadbeats the bill. I don't know what sort of bonding you can put in there as a compulsion because you can't prove that it's Mac's fault that those people didn't pay their bills.

SEN. BUCKLEY: I don't think we addressed ourselves to that.

MR. HARRISON: In the bonding procedure you have a requirement, Page 6 Section 8, maybe I read it wrong, but I think there is...

SEN. BLOOMER: To insure reimbursement of political subdivision for the State of Vermont, police agency or medical facility for the cost of additional law enforcement officers and medical facilities required under this condition.

SEN. BUCKLEY: I don't think that includes a bad bill, does it?

MR. HARRISON: I think that's the concern of the people in Holland or Newport. I just don't think you can enforce that if that is the intent.

SEN. BUCKLEY: Is that what you meant, Kim?

MR. CHENEY: Essentially, yes. Mac hired deputy sheriffs, or so he said, to police this thing and then he never paid them.

SEN. BUCKLEY: Well, I don't think David objects to that.

MR. HARRISON: No, the policemen...

MR. CHENEY: And what happened in the hospital was that they didn't have adequate treatment--of course they had a shooting--for people so a whole bunch of people got brought up to the hospital and the hospital in order to care for them had to get a couple of doctors from Burlington to come up and cover the normal patients as well as the influx and this is

Intended to say that if that happens, then there has got to be some way to reimburse the hospital.

SEN. BUCKLEY: You still haven't addressed yourself to the bad bills. If I go up to the hospital with a broken leg and run up a bill of \$2000.00 and I don't pay it, you don't expect Mac to pay that?

MR. CHENEY: No.

MR. HARRISON: But that's the hospital's problem. I mean that's why it's causing the hospital extra money. Otherwise the revenue would have paid for that extra doctor. It would pay for it across the board if they could collect there bill, but they can't and that's why they want that section in. You can't require that any more than you can require it for the UVM football game. It's not Mac's fault that these people are going to the hospital. If the promotor is responsible for whatever happens, then you are encouraging...

SEN. BUCKLEY: Let's put it this way. If he agreed to have 20 deputies and he only had five and half way through he agreed to pay them and he didn't, then you have a situation that is out of control and the hospital is full of people. Would you say Mac was responsible for that?

MR. HARRISON: If the hospital was full of people because of criminal conduct that Mac encouraged--if you could pin that on him...but if it's full of drug overdoses or fulloof people who fell of a tree and broke their foot... I think it is a separate question. He probably already has the liability if he did encourage it, if he said beat up a Narc and you beat up a Narc and the Narc goes to the hospital, then he probably has some sort of liability.

SEN. BUCKLEY: Can you get some sort of liability?

MR. CHENEY: It would be expensive if you could. Another thing that I think is that it would have worked if people paid their admission fees. There were some, but it wasn't done right. The court order to escrow those thing and I think they ought to have a sheriff there to collect the money as it came in. Instead, the relied on Mac to pay them at the end of the day, etc. Because bonds are going to be hard to get, you could say, furnishes an adequate bond or provide other means of financial security. To allow that kind of...Mac was agreeable when he thought he was going to get paying patrons, but there was nobody who would write him a bond, but he was agreeable to haveing up to 6 or 8,000 dollars of his proceeds escrowed to cover any cost and them it would be remitted to him if there weren't any. What happend was that the sheriff never went up to the box office and escrowed the money which is probably what he should have done.

MR. HARRISON: There is still a separate question. He should be responsible for police protection, but he is probably not responsible for what happens medically except that he is required to provide that at the festival.

SEN. BUCKLEY: If something were put in there to exclude medical bills and private individuals, that would take care of your question, or part of it.

MR. HARRISON: Certainly, although I think that is a whole...

SEN. DANIELS: Under medical we have two things. He is supposed to provide the emergency medical facilities there which he has to pay for and the other thing is that people who get badly hurt--drugs or whatever--and they get taken to the Newport Hospital, then the hospital has to bill the individual just like any situation. So why don't we strike out the reference to the medical in No. 7 and it would just be reimbursement of political subdivision, State of Vermont or police agency. The emergency facility he has to provide. Anything else is the province of medical payments.

SEN. BUCKLEY: Is that all right with you?

MR. HARRISON: That would be an improvement.

SEN. BUCKLEY: All right. Where else do we have to fix it up?

MR. CHENEY: No. 8B. After the word bond--furnishes an adequate bond or other financial security. Give him a little flexibility there. Are you going to strike medical?

SEN. DANIELS: Yes. And then down below strike the reference after law enforcement officer and medical facility.

MR. HARRISON: There is one other very small question in the definition of the fairground's seating. I don't know whether the fairground would be exempted if the people weren't asked to be seated.

SEN. BUCKLEY: All they have to do is have the seats. The theory behind that is where there is seating there are also other facilities such as parking, toilets, etc. They are rigged up to handle a large crowd. When you have that many seats you normally have the rest of the facilities to go with it.

SEN. BLOOMER: Graham as a great grammarian. Page 2. No. 7--public place.

MR. CHENEY: That needs a little work.

SEN. BLOOMER: Inside a permanent building which is an open area.

SEN. BUCKLEY: Where people cannot be accommodated inside a permanent building.

SEN. DANIELS: You could put public place means an open area where patrons cannot be accommodated inside a permanent building.

MR. CHENEY: That's what I had at one point.

SEN. BUCKLEY: Are you going to become a grammarian too?

SEN. BLOOMER: No. I didn't know how to do it.

SEN. DANIELS: I have been correcting students term papers for years.

MR. CHENEY: I am one student.

SEN. DANIELS: You haven't come to the question I had. In No. 8B on top of page 7. You say, a person who desires to promote or organize any outdoor public gathering may petition the court for an order declaring that the gathering is not subject to this act. Fine. But then you say that the petition shall contain a copy of the application. If it wasn't subject to the act, he shouldn't have to file an application.

MR. CHENEY: You should put "if any" after that.

SEN. DANIELS: Why not just strike out that last sentence and if he comes in with a reasonable statement, if the court doesn't like it, then the guy loses.

MR. CHENEY: That sentence is designed to pick up the earlier one--the first sentence--if you don't like the conditions.

SEN. BUCKLEY: That helps the applicant to show that the people are arbitrary.

SEN. DANIELS: How about--a copy of the application, if any--a copy of the permit, if any.

MR. CHENEY: Right.

MR. BUCKLEY: All right.

SEN. BUCKLEY: Are we ready to fly?

MR. CHENEY: There is one other wrinkle I would like to point out to you. Page 7, C above section 9. The purpose of that is to avoid a whole lot of parties coming in. No.

SEN. BLOOMER: How about Amicus Curii?

MR. CHENEY: No amicus curi.

SEN. BUCKLEY: Is it amicus curi or amicus curii?

SEN. BLOOMER: I don't know.

MR. HARRISON: Are you saying that there could be no other parties in that suit? A.C.L.U. couldn't file and say that this was an infringement public assembly?

MR. CHENEY: Yes. That's what it says.

MR. HARRISON: Why?

MR. CHENEY: Well, actually what I had in mind was the reverse--that we've set the commissioner up with the authority and the town's people might come in and you suddenly have a piece of litigation that was out of control with a whole lot of parties. I think the idea of this was to do it very expeditiously and let the judge work with one or two people.

MR. HARRISON: I don't know whether that can be done on the other side-- on the right of the defendant. There is a position half way in between in certain situations.

SEN. DANIELS: It's the defendant who wants to be expeditious and if he thinks he would like the help of a friend of the court, OK--if he doesn't, you're thinking that the other side might drag it out by having a lot of friends of the court?

SEN. BUCKLEY: No. What happens if the town doesn't agree with the commissioner. Suppose the town gives the permit and they don't want it. So the guy is going through--he's all set and then he is tied up for six months.

SEN. DANIELS: That's another point, The town is frozen out.

SEN. BUCKLEY: They're out too.

MR. CHENEY: Everybody's out.

SEN. BUCKLEY: It's all right in the commissioner's lap.

MR. CHENEY: This was in the original S.100 and it seems to me a useful idea to prevent any litigation from getting out of hand.

MR. BUCKLEY: The only guy who gets hurt in the deal is the guy who gets harrassed by time--the developer. He's the guy who's in a hurry. And what this says is, if you don't like what the commissioner says, you go right down to the red brick courthouse and take it up with the judge.

MR. HARRISON: That's an injunction procedure. Doesn't that reduce the time in itself?

MR. CHENEY: Yss. Well, as I just pointed out to you, you're right. Time becomes critical here.

SEN. BUCKLEY: Not to the community.

MR. CHENEY: The more parties you have, the harder it is to get the issue resolved.

SEN. BUCKLEY: They can harrass the commissioner and the promotor.

MR. HARRISON: There is a burden there on the town and the state. The judge isn't going to...the time is on the side of the promotor, not the town or the state.

SEN. BUCKLEY: Not the way I see it.

MR. CHENEY: I agree with you.

SEN. BUCKLEY: He is set up for July Fourth and all they have to do to municipally harrass them is diddle around so that he doesn't have time to get geared up and the next thing you know he says, I'm getting to hell out of here. I'm being harrassed. The judge went along with me but

the goddamn town is going to bring another action.

MR. HARRISON: But once the permit is granted the town has to get an injunction that the assembly can't be held. If the permit is granted-- either upheld by the court or originally granted-- the time benefit does shift to the promotor. It depends upon the situation because once it's granted the town is going to have to get an injunction to switch the decision. Once it's granted, he can go ahead.

SEN. BUCKLEY: They can say they have new evidence--they want another hearing and put the heat on the judge and the judge says, I can't do it this week. I'll do it next week and the next thing you know, the guy is up the creek. I don't know. If you want to get quick action, that's the way to get it.

MR. HARRISON: Isn't it up to the state to work out with the town--not up to the defendant to work out with people who would want to file as friends of the court? I don't think it's the subject of the law to say that people can't defend their legal interests. The town has a legal interest that they ought to be able to bring forward.

SEN. BUCKLEY: Suppose all the neighbors get involved?

MR. HARRISON: Don't they have that legal right?

SEN. BUCKLEY: They won't if you pass this.

MR. HARRISON: That's exactly why you shouldn't restrict who should be legally represented.

MR. CHENEY: I think arguing on the First Amendment to assemble, the more complicated legal proceedings can become, the more frustrated your rights are.

SEN. BUCKLEY: As far as I am concerned, we'll change it for you. I'd be delighted to change it, but then you are going to decide that you have a real problem.

MR. HARRISON: A.C.L.U. Isn't planning on running into court all next summer. I think that the promoters have their own legal defense. I'm just saying that a case which raises unique questions as to the right to legally assemble <sup>in</sup> the case where we would want to file a brief that would not support either the state or the promotor, but raises a legal question somewhere in between the two positions, that we ought to have the opportunity to do that. I don't anticipate it happening, but I can't see the law denying us to have that opportunity.

SEN. BUCKLEY: Well then, let's just change it around and let anybody go to court if they want and then the goddamn thing will be a mish-mash. It's all right with me because I don't care what or they hold them up there or not.

SEN. DANIELS: If we take out the section, this means that anybody can become a part and anybody has the right of appeal here. It bothers me that you would have an essentially administrative action by an official of state government and the town would have no opportunity to appear to present its side of the story.

SEN. BUCKLEY: They can talk to the commissioner.

SEN. DANIELS: But they can't talk to the judge and he is the one who is making the decisions on the basis of what hear hears from the commissioner and the applicant.

MR. CHENEY: I have a pretty clear idea of what's going to happen. First of all notice for this thing have to be scattered around and, as soon as it is filed with the commissioner, it goes to the State's Attorney and the town clerk and Attorney General and if it ever gets to the court stage, the A.G. is going to be in the middle of it and contrary to what some people believe, he's going to listen to what people have to say and try to accommodate their interests.

SEN. BUCKLEY: I'm not worried about him listening. I'm worried about him listening too much.

SEN. DANIELS: Well, let's look at a situation where there is an applicant who says, OK, the town doesn't like it,...

SEN. BUCKLEY: They can go to court.

SEN. DANIELS: The town wants to go to court...

SEN. BUCKLEY: OK. Let them do it that way.

SEN. DANIELS: The Superior Court rules...

SEN. BUCKLEY: The neighbors can go to court, everybody can go to court.

SEN. DANIELS: And the court rules against them according to the timely relief provision before the date of the assembly. Then, in the ordinary practice and suppose the town loses and they are going to appeal and the appeal is going to take so long that it will not be possible to hold the assembly...How do courts handle a case like that?

MR. CHENEY: It would depend on ...say the court declined to issue an injunction then whoever objected to that would have to go to the Supreme Court right away and say, they want a temporary order or a hearing.

The Supreme Court on some emergency basis has convened promptly to hear it. They don't have to. Or if the court issued an injunction, somebody would have to hop up to the Supreme Court and say to vacate that.

SEN. DANIELS: Legislating at that point, I would rather take that out and see if we have instances which develop and there are harrassing tactics and the judiciary procedure isn't working right, then try to do something about that problem. But it seems to me more consistant to all party's rights to get their grévances heard.

SEN. BUCKLEY: As far as I'm concerned, take it out.

MR. CHENEY: You might, as a compromise put in the representative of a political subdivision of where the assembly is to be held and let them appear.

SEN. DANIELS: Not A.C.L.U.?

MR. CHENEY: Maybe you could put something in to...

MR. HARRISON: I don't anticipate that happening, I just...

SEN. DANIELS: OK. If it the political subdivision, then it can't be just the neighbors.

MR. CHENEY: Right.

SEN. DANIELS: That makes me feel a little better.

SEN. BUCKLEY: I don't care what you do with it.

MR. CHENEY: Senator Newell?

SEN. NEWELL: I think I would rather see it out. If it causes great concern and consternation...

SEN. BUCKLEY: It may be the key on which you get your suit. It may be the thing that precipitates. The guy is harrassed. First Amendment.

MR. CHENEY: Yes.

SEN. BUCKLEY: It's all right, Let's take it out.

MR. CHENEY: Yes, I think...

MR. HARRISON: You're worried that the guy with a legitimate assembly is going to be harrassed?

SEN. BUCKLEY: This is loaded for the guy who wants justice. You have it loaded now. He has the opportunity to go to court and get it.

MR. HARRISON: But the thing is, he has to show the court a reason to make a decision that that assembly can't happen. The town of Holland has to go to the judge and say, this permit has been granted or you have overruled Corcoran and allowed this assembly to be held and he's got to prove...

SEN. BUCKLEY: But supposing Corcoran and the promotor agree and he gets the permit? Now what you're saying is that the town is going to come in and upset...

MR. HARRISON: The judge has got to agree to issue that injunction, restraining order or whatever is asked for.

SEN. BUCKLEY: They don't even have to go to the same judge to get an injunction.

MR. HARRISON: But the judge has to agree with those contentions and it is not a question of it's being considered six months from now, when the injunction is requested, there is an immediate hearing on it.

SEN. BUCKLEY: OK. Take it out. It's all right with me.

MR. CHENEY: One other point. In the middle of that same page I have a sentence--evidence commonly relied upon by prudent men in the conduct of their affairs may be received. This is a departure because it isn't going to require any normal rules of evidence to apply and the reason they

did that is because in the Holland situation, it was practically impossible to determine how many people were coming and yet people had pretty good judgments. We had a hearing--a thing like this last year when umpteen people showed up and I think that sentence will help resolve this and make it more flexible. It does remove the normal rules of evidence from the injunction proceedings.

SEN. BUCKLEY: Is that it?

MR. CHENEY: Yes.

SEN. BUCKLEY: Do you suppose we can get it in shape so Graham can sign it out?

MR. CHENEY: That's it. It would be a strike all.

SEN. BUCKLEY: Well, we have made two or three changes in this.

MR. CHENEY: If you want it typed over, I think if you took it down to the legislative council--could't they do that? If you are disposed to report it in this form.

SEN. BUCKLEY: Are you ready to go with it?

SEN. NEWELL: I would rather wait until the whole committee is here

AND our two legal representatives are here.

SEN. BUCKLEY: Well, Graham, what we did was vote the bill out subject to getting the draft...

SEN. NEWELL: Then it's agreeable to all of them?

SEN. BUCKLEY: Philosophically, yes. We agree to let the bill go subject to...

SEN. NEWELL: I get a little concerned about this philosophically.

SEN. BUCKLEY: Well, if Russell and Bob, God love them, want to go down and have the court sworn in, that's great, but I don't see how we can-- we only have a few weeks left--I don't see how we can keep putting the thing off until tomorrow and tomorrow, but I am perfectly willing to if that's what you want to do. I thought we covered that point by saying we're going to go with this bill as soon as we get the wrinkles out.

SEN. NEWELL: I wasn't here so I don't know whether Russ offered any objections.

SEN. BUCKLEY: Wouldn't you say that that's what the record showed?

MS. COPELAND: I think it was passed pending the amendments being made

MR. CHENEY: That was my understanding.

SEN. BUCKLEY: Yes. How many weeks do we have, three?

SEN. DANIELS: That's what I have in my notes here. It was voted in principle, Newell to report, subject to Cheney's revisions of Section 8. Check back with Committee.

SEN. BUCKLEY: We've done that. The reason I'm anxious, Graham, is that the house has got a bill.

SEN. NEWELL: I'm aware of that.

SEN. BUCKLEY: It's not a very good one. They are anxious to see what we are going to do.

MR. CHENEY: They have been waiting.

SEN. BUCKLEY: If the appropriate house committee could get copies of this they might say, scrap ours and wait for the senate bill.

MR. CHENEY: If shows up on the calendar, they will have it.

SEN. BUCKLEY: Yes.

SENATE JUDICIARY  
March 12, 1974

Page 27

SEN. BUCKLEY: Are you willing to sign it out and report it? All in favor? Aye (unanimous). We'd better quit for the day.

ADJOURNED: 12:37

TRANSCRIBED: Jo Ellen Copeland

12 March 1974  
Senate Judiciary Committee  
Kimberly B. Cheney, Attorney General  
Abstracted comments Re: S.100

MR. CHENEY: (Re: Senator Buckley's question--does this mean no more rock festivals or that they have to be very well run?) I think it means the latter. I think you could have one under this if provisions are adequate--like the one they had at Sugarbush. They had almost 5,000 there.

MR. CHENEY: (Re: providing adequate fire, police, medical and other essential services) These are conditions which the Commissioner would impose upon the permit. He would say, look, you can have a permit to hold this but you have to have three fire trucks, eighteen additional deputies and five doctors, depending upon the size of the crowd.

.....  
MR. CHENEY: Sec. 7 (B) (1) says the patrons have to have adequate stuff and the new (4) says that the public can't be deprived of these things.

MR. CHENEY: (Re: Senator Daniels' concern re: "denuded services elsewhere...") Yes, that is the idea. (4) looks to continue services for the general public.

.....  
MR. CHENEY: On another scale is that if the Commissioner puts on such burdensome provisions that the promotor says, well, I just can't function, then he can use Sec. 8 and hop into court and say, Judge, this guy is infringing my First Amendment rights by these unreasonable

conditions and then the Judge decides what is reasonable.

.....  
MR. CHENEY: I think in the Holland situation with some decent planning they would have required that a number of latrines be outside the parking lot that people could use.

MR. CHENEY: (Re: Senator Buckley's comment that the promotor would have to provide access to the sanitary facilities for both patrons and the general public) I agree with that. I think under (1) the Commissioner, if he gets interference with this thing, would require them to set it up so that the people could use the latrines. Maybe the wording in (4) could be changed around a little bit, but I think the substance of that is important because what it says is that you can't require a town to devote all its fire, police and medical facilities to the assembly and leave the rest of the public unprotected at that time, I think the language--I'm open to suggestions--but I think it covers what's needed there.

MR. CHENEY: (Re: Sec. 8, Page 6--the promotor being liable for "bad bills" of patrons at hospitals) And what happened in the hospital was that they didn't have adequate treatment--of course they had a shooting--for the people so a whole bunch of people got brought up to the hospital and the hospital, in order to care for them, had to get a couple of doctors from Burlington to come up and cover the normal patients as well as the influx and this is intended to say that, if

that happens, there has got to be some way to reimburse the hospital.

.....  
Mr. Cheney agreed that the promotor should not be liable for personal injuries of patrons.

MR. CHENEY: Another thing that I think is that it would have worked if people had paid their admission fees. There were some, but it wasn't done right. The court ordered to escrow those things and I think they ought to have had a sheriff there to collect the money as it came in. Instead they relied on Mac to pay them at the end of the day. Because bonds are going to be hard to get, you could say...furnishes an adequate bond or provide other means of financial security. Mac was agreeable when he thought he was going to get paying patrons, but there was nobody who would write him a bond. He was agreeable to having \$6,000.00 to \$8,000.00 of his proceeds escrowed to cover any cost and then it would be remitted to him if there weren't any. What happened was that the sheriff never went up to the box office and escrowed the money which is probably what he should have done.

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(Re; further corrections) Mr. Cheney agreed that Sec. 7 (B) (new 7) should be corrected to read, "the person holding the public assembly furnishes an adequate bond or arranges other financial security in a reasonable amount to insure reimbursement of a political subdivision, the State of Vermont or any police agency for the cost of additional law enforcement officers required to meet any other condition."

(Re: Sec. 1 (7). Mr. Cheney agreed to Senator Daniels' suggestion to strike "a place" in Line 7 and "which is an open area" on Lines 8 and 9 so it would read, "public place" means an open area where patrons cannot be accommodated inside a permanent building, other than a stadium used for sporting events, or a fairground having permanent seats for patrons, with respect to which a private person permits use by the general public.'

(Re: Sec. 8 (B). Mr. Cheney agreed to Senator Daniels' suggestion to insert "if any" in Line 5 so it would read, "An applicant may petition the superior court for review of the reasonableness of any conditions imposed in a permit. A person who desires to organize or promote any outdoor public gathering may also petition the court for an order declaring that the gathering is not subject to this act. The petition shall contain a copy of the application, if any, a copy of the permit, if any, and state the grounds for the decision requested.

MR. CHENEY: (Re: Sec. C, Page 7) There is one other wrinkle I would like to point out to you. Page 7, Sec. C above Sec. 9--the purpose of that is to avoid a whole lot of parties coming in.

MR. CHENEY: (Re: exclusion of amicus curiae) Well, actually, what I had in mind was the reverse--that we've set the Commissioner up with the authority and the town's people might come in and you suddenly have

a piece of litigation that was out of control with a whole lot of parties. I think the idea of this was to do it very expeditiously and let the judge work with one or two people.

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MR. CHENEY: (Re: Mr. Harrison's question re: A.C.L.U. and Senator Buckley's question re: "the town"). Everybody's out. This was in the original S.100 and it seems to me a useful idea to prevent any litigation from getting out of hand.

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MR. CHENEY: (Re: Mr. Harrison's question as to whether "the town" (A.C.L.U.) has the right to be able to bring their legal interests forward) I think arguing on the First Amendment to assemble--the more complicated the legal proceedings can become, the more frustrated your rights are.

MR. CHENEY: (Re: including amicus curiae) I have a pretty clear idea of what's going to happen. First of all notice for this thing has to be scattered around and, as soon as it is filed with the Commissioner, it goes to the state's attorney and the town clerk and the attorney general and, if it ever gets to the court stage, the A.G. is going to be in the middle of it and, contrary to what some people believe, he's going to listen to what people have to say and try to accommodate their interests.

MR. CHENEY: (Re: Senator Daniels' question as to the possibility of appeals lasting beyond the scheduled "assembly" date, thereby preventing the assembly). It would depend, for example, whether the court declined to issue an injunction then, whoever objected to that, would have to go to the Supreme Court right away and say they want a temporary order or a hearing.

.....  
MR. CHENEY: (Resolving the amicus curiae question suggests) You might as a compromise put in the representative of a political subdivision of where the assembly is to be held and let them appear.

.....  
It was agreed, as Mr. Cheney suggested, to strike Sec. 8 (C) on Page 7.

MR. CHENEY: (Re: Sec. 9 on Page 7) One other point. In the middle of that same page I have a sentence...evidence commonly relied upon by prudent men in the conduct of their affairs may be received. This is a departure because it isn't going to require any normal rules of evidence to apply and the reason they did that is because in the Holland situation, it was practically impossible to determine how many people were coming and yet people had pretty good judgments. We had a hearing-- a thing like this--last year when umpteen people showed up and I think that that sentence will help resolve this and make it more flexible. It does remove the normal rules of evidence from the injunction proceedings.