

March 5, 1980

LB 605

have another bill from the Judiciary Committee which at least one member very strenuously opposed at every step of its consideration. What this hodge podge of a bill does is to take conduct, which is not illegal at all even under the bill...this bill does not make it anything illegal except to not disperse when an officer tells you to disperse, but if the conduct itself is not illegal and the officer cannot order you to cease the conduct, why should he be allowed to order you to disperse? If it is as legal to do what this bill condemns as it is to speak, and an officer cannot order you to stop speaking, why should he legally be allowed to order you to stop doing something else which is not illegal? This bill does not make disorderly conduct a crime. This bill says that if in the unaided discretion of an officer there are three or more people doing something that he thinks might cause injury to some person or to some property, he can order those people to disperse. The crime is not in what they are doing. The crime only comes about if they don't disperse. So three people could be engaged in a very violent argument and the officer could say, I think this conduct creates an unreasonable risk of injury, so I am going to order these people to cut this out, and he says, I am in uniform, I am an officer, here is my badge, here is my identification, now get to stepping. So the people say, no, we have the right to freedom of speech. The officer says, look, I told you once...I am going to tell you one more time, this argument is getting out of hand and it threatens danger, the risk of injury to somebody else. I think such a risk is unreasonable and if you don't disperse I am going to put you in jail. Then the officer under this bill can take you to jail, and you go to court and the judge looks at it, if a prosecutor did not dismiss it, he says, why this is ridiculous. There was no basis for this arrest. So he lets you go. But the point is that conduct which is not unlawful has been made unlawful in the opinion of an unguided officer so he can make the arrest, he can break up an assembly, then say, well you go to court and persuade the judge that what I did was not justified. We should not enact laws like this. I think it is a waste of time and it certainly is a waste of money, and it ought not be put on the books. The kind of thing Senator Haberman was discussing like fighting and so forth, that is not even in his bill. Senator Haberman, nobody is practicing law with you. People are asking questions about what is in your bill and this amendment that you are asking to be adopted strikes everything that you were talking about. Fighting and so forth is not even in the bill. Now it is your bill, why will you get upset when members of the Legislature ask you questions about a bill that you introduced

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