

DRAFT MINUTES

PUBLIC FORUM ON INITIATIVE, 8:30 a.m. to 1 p.m., Sat., Jan. 23, 1988
State Capitol Auditorium, Honolulu

Moderator Ted Becker opened the meeting by introducing Senator Clayton Hee. He noted that in 1987 Sen. Hee had submitted an initiative bill, but withdrew his and let Sen. McMurdo submit hers.

Senator Hee's comments: "I was only too glad to respond to Senator McMurdo's wishes that the Judiciary Committee be the chief sponsor of this forum." He gave a quick summary of initiative bills that have been submitted to the Legislature: none have been successful. The indirect initiative bill authored by Sen. McMurdo last year was Senate Bill 734. Hee said, "Initiative is a vital option for direct input and can be used as a last resort--a legal demonstration that there is enough voter support." He said the Judiciary Committee felt this concept was worthy of consideration and moved it to the House and there it rests. It is not dead technically and can be moved out, should the Chairman of the Judiciary Committee move it out. "However," he said, "I suspect we will not hear an initiative bill this year."

(University of California) in San Francisco

The next speaker was Dr. Jon Van Dyke, formerly of Hastings School of Law, ~~at Stanford~~, author of excellent books on jury trials, soon to be director of the University of Hawaii's Institute of Peace. Now with U.H. ~~Political Science Department~~, ~~as is Ted Becker~~.

Law School.

Van Dyke said, "It is timely now to generate pressure for a statewide initiative. It is simply one aspect of active citizen participation in government. In Hawaii the citizens are used to playing this role." He mentioned our constitutional conventions, followed by voting on specific proposals. Also, the recall election of certain City Council members in Honolulu. "It is not," he said, "something new or novel--we can feel comfortable with initiative." He said in 1978 voters were given several choices--yes, no or no selectively. If no was used selectively, it was presumed they would vote yes on others. The vote was challenged because of this. The Supreme Court looked at it and said it was fair because the proposal had been widely publicized. It is a nice precedent for the fact that we can trust our voters, Van Dyke commented.

He added that almost every Court has upheld a vote by the citizenry. "They are reluctant to intrude--in fact are deferential to the initiative process." In his opinion, the voters are not easily duped. If not given individual choices, they will say no. Sometimes an initiative measure pressures a legislature into enacting bills, such as when California residents put forth an initiative that would have imposed very strict safety standards. The California Legislature then went ahead and passed a series of bills that involved nuclear safety. There is a "symbiotic" relationship between the voters and the Legislature, he said. In Hawaii this has happened with the land use reclassification of Nukolii, he noted. The two initiatives there involving building of a resort hotel gave the people a chance to be heard. He felt ~~the funding on~~ the second initiative was "distorted somewhat" because the funding was provided by the developer at Nukolii. The 9th Circuit Court is still struggling with that.

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Hawaii Supreme

reverse the circuit court's decision setting the

Van Dyke's "personal prediction" is that the Court will set aside Date/Laau. He said they may set it aside on the grounds that it is in conflict with a State law that says land use has to be done through comprehensive planning. He believes this would be an "incorrect view of the dynamics between State and County planners"-- and failing to see the difference between general plans and development plans. Sandy Beach will face the same kind of question, he said. Can voters participate in land use decisions?

What could be more important to the voters than land use planning, he asked. The problem is with how our own judges are looking at this. On Sandy Beach--can lawyers take the individual depositions? Can they ask the people who signed the petitions for initiative whether they fully understand what they were signing? He said there should be a protection order issued in this situation, because it is an unwarranted intrusion into our right to make our voting decisions in secret. We must rely on the common sense and rationality of our voters.

California voters have submitted an initiative involving campaign spending--increased public financing, a very sophisticated bill. We need one like it here, he said. This type of bill would probably come only through citizen initiative. "Initiative will ventilate a lot of new ideas," he added.

Keynote Speaker: David Schmidt, editor of Initiative News Report. (I missed the beginning of his speech because I was on an errand) He said states that have statewide initiative have voters who know their votes make a difference. They know even if politicians are jerks, you can pass laws anyway. The people are sovereign. They delegate their power to the politicians. The Supreme Court has ruled that the initiative process is a valid part of government. Mondale asked, "Where's the beef?" "The beef is in initiative," Schmidt said, "with real specific proposals to change things."

"Our representative bodies are not always representative," said Schmidt. "Sometimes there is a lot of power in the hands of a few key people. Initiative is a way to not become disillusioned about government." He noted that the first movements for women's suffrage were passed by state initiatives, a decade or more before women had the right to vote in national elections.

"We need initiative the most when some established group has control. More than 500 initiatives have been voted on nationwide and everyone has brought the government closer to representing the real will of the people. People like the initiative process--80% in California says it's a good thing that we can vote on initiative. Left and right forces have been pretty evenly divided--voters are very choosy. People do vote on initiative--93% who vote for President also vote for initiative. There aren't too many initiatives--they average 1-2 per election. Voters do tend to use initiative to vote tax cuts. Initiatives are not a disaster--Proposition 13 was not a disaster, despite what some news article said. For example, two years after Prop 13, California had just as many public employees."

The Boston Tea Party was the result of a tax revolt, he noted. He quoted Thomas Jefferson to the original American Du Pont--"We both love the people, but I trust them as adults who I leave to free government, while you consider them infants."

Jefferson also said, "There is no safe repository of government, but the people."

And Ralph Nader said, "The initiative is that democratic muscle that we need to exercise more and more."

He added, "You have to have constitutional authority to make an initiative."

Question: Can a state rightfully deny land use issues on initiative?

Answer: The Supreme Court lets states make their own regulations.

Contribution limits--fails in state after state--can't put limits on spending or contribution on ballot issues. Free speech means you can spend as much as you want. No one could prove that the side with the most money won--so many other things matter.

In Hawaii, he said, try to use the local initiative process as much as possible, so you are building a constituency that is accustomed to having this right that they deserve to have. Then you can point to initiative results and say, "See, there won't be any disasters." Keep the idea of initiative right in front of the voters--put it on the ballot, "Are you in favor of initiative?"

Question: On the mainland, has anyone ever deposed petition signers?

Answer: No, never. This is outrageous--it brings up a whole chamber of horrors such as literacy tests. It is an intrusion on the secret ballot, an infringement of the right to petition and the right to vote.

Question: How can we protect 53 people who have already been subpoenaed and how can we stop this from happening again?

Answer: It's so anti-democratic that it's a great time to get publicity for your cause. Protest as much as possible. Have people volunteer to explain why they signed the petition. Use political judo. Talk to those 53 in such a way as to not intimidate them. Tell them it's a secret right and they don't have to talk about it at all.

Comment from audience: The Judge will rule next Friday if they can resubpoena. Judge Simeon Acoba--at 10 a.m., Friday.

Question: How can we pressure Metcalf to reverse the situation (where he is tabling the initiative bill in the House)?

Clayton Hee's answer: When I first came to office in 1983 there was a groundswell of opposition against initiative by special interests, such as the Chamber of Commerce. Two years ago this began to lessen. Last year nobody seemed to want to stop initiative. I would say hurt a politician (who opposes it) on the ballot and in the pocketbook. Advise your representatives and senators that you are in favor of initiative and that you vote.

Hee added, "Too much of government is held in private."

Senator McMurdo commented that the Chamber of Commerce is pushing a bill to prohibit initiative for land use and planning.

Panel: "Initiatives I Have Known"

Jack Davis, Big Island, who said he headed an initiative on fluoridation, not fluoride. He explained that the State Health Department got the Big Island County Council to fluoridate the water there. All the power groups on the Big Island except the Democratic Party supported this. It was widely discussed for two years. The Council held meetings in all districts and opposition was 4-1 and as much as 10-1 against the fluoridation. Nevertheless, the Council still approved it. Helene Hale headed the initiative movement and they obtained 10,000 signatures. They don't know for sure how much the government spent, but the initiative supporters think they were outspent by as much as \$25 to \$1 in promoting their objective. Davis said, "We got out as much information as we could--12 of us spoke hundreds of times." End result--80% of the voters in 1974 opposed fluoridation. As Davis noted, thanks to initiative, the people were finally allowed to express their views.

Norman Lewis, Hawaii Taxpayers Assn.--His experience was and is "sort of scary," as he put it. In 1982, a recession year, the Hawaii County Director of Finance decided that assessed property values were going up. Lewis and some other concerned citizens tried to meet with the director, but he had a completely closed attitude they discovered. When they considered an initiative, they were told they did not have that right in fiscal matters. They then got enough signatures to put it on the ballot--an initiative that would allow Hawaii Island the right to have initiative and referendum on fiscal matters. "We needed 20% of the votes--we won by 390-odd votes," Lewis said. "They didn't take us seriously and we caught them off-guard."

Once they had the right to initiate legislation regarding fiscal matters, the group then circulated petitions to keep the property assessed valuation down. Lewis said, "We found out a lot of people weren't registered to vote, so we applied to have our people become voter registrars." The County Clerk balked on that, but they were finally forced to hold classes for us. Normally, everyone passes voter registrar classes, but only 40% of our people were passed." When they obtain enough signatures on their petitions to get their cause on the ballot, the County then blocked them with a lawsuit. The Judge backed up the County. The case is now in Federal Court. Lewis and some of the other people in his group had to pay \$27,000 each toward the court costs and fines because they should have taken it to State Court first. He said he felt like he was living in "The People's Republic of Hawaii". His group currently has 2,000 paid members.

JoAnne Yukimura, Kauai County Council Member: She discussed her leadership role in the first Nukolii initiative and went to great lengths to stress that she and Rep. Kanohe, while coming from "diametrically opposing sides," were mutually respectful of one another and of one another's Nukolii positions. She then went on to say that before Nukolii, developers could operate on the premises on Kauai that as long as they had the officials in their corner they didn't need the people.

The initial Nukolii development plans called for 1,500 rooms on 60 acres. According to Yukimura, "It broke every planning rule in the book--agriculture, zoning, resort designated (it wasn't), need in that area, etc." She added, "Many of us who opposed Nukolii were not against all development, if properly zoned." She alleged that much of the development agreements were secured under "false premises". The man who lead it was representating an illegal hui made up of high-placed people. When a public hearing was held to discuss the development, only 3 out of 7 council members came to hear what the public had to say. One of the key testimonies was presented by Stanley Baptiste, who spoke in favor of open space. However, by the time it came to vote on Nukolii, the County Council included Baptiste as a member and he voted for the development. So, she said, when people point to elections as remedies--well, it doesn't always work. But in the next election, she said, "The people kicked Baptiste out." She added that she does not necessarily consider land use planning by initiative and referendum to be the best tool, but the public does need a recourse that is independent of politics

Senator McMurdo, Initiative for Ordinance and Date/Laau: She said, "I am personally proud that I was the chair of the Initiative Committee when we did the first initiative here to get the right of initiative for ordinance in the City and County of Honolulu." She then asked everyone in the audience who had participated in that initiative to stand. "Once you've slugged it out for signatures, you stand a little taller," the Senator commented. "At the beginning we were not taken seriously," she noted, "although we had a fairly positive press. It did take longer than any other initiative. The shopping centers wouldn't let us in to collect petitions; we were a small band of people and we persevered. We had to lick the Charter Amendment and we had to get 10% of 23,441 votes. The Charter Amendment had language which would have destroyed initiative. So we pool our resources and used a theme of "Initiative Yes-- Charter Package No."

Date/Laau: The Senator explained, "I was living in Moiliili and was chair of the Neighborhood Board, when the landlord of a parcel in the Date/Laau area in my district began increasing the lease rent by as much as 600% on modest housing there. He then put in an amendment to the development plan that would have raised to 350' the building height in our area. The residents there had already fought very hard and gotten a moratorium of 40'. The people were not aware of what this man was doing, so our Neighborhood Board went out with fliers to inform people. We rounded up a tremendous amount of citizens and we went with them to talk to the City Council. We couldn't get anywhere with them, so we turned to initiative to go back down to the low density and to require that any time any change is made, that all residents must be notified--similar to the way the Liquor Commission notifies residents when a bar is applying for a license in their area. We created a furor--big business, big government, big labor all came out against us. Even the Real Estate Board did, and I chewed them out about that! We won by the skin of our teeth. I was also running for election to the Senate at the time and some people thought I should just concentrate on that and not cost myself any possible votes by working on this initiative, but I would have lost my election rather than give up my work on this initiative. A lot of people feel that the State Constitution vests the power of the people with the right of initiative. I have introduced a bill to let you the people decide whether or not we want a convention center in Hawaii." (Big round of applause on that)

Frances Delany, Fort DeRussy: She commented on how many similarities there are in all initiative efforts. She got involved in the DeRussy situation when she read in the paper that DeRussy would be used as a convention center site. "A number of us who lived in the area appealed to our Senator, Mary-Jane McMurdo, and she suggested we start an initiative movement. I was very naive. I learned that once you go through an initiative movement, you are changed forever."

Dr. Delany went on to say: "Our effort was opposed by our Senior Senator in Washington, D.C. and by Dr. Kelly, head of the Outrigger Hotels. Our senior senator had always defended DeRussy as a recreational site. Suddenly, after Dr. Kelly presented his idea to use DeRussy, our Senior Senator changed his mind. I don't know why."

Commented that the entire initiative effort was "a dirty, miserable fight," she said most of us were senior citizens and we were amazed that nobody welcomed us. Finally we were able to get the Safeway stores as a petition-gathering place, thanks to Senator McMurdo. We were still harrassed by young, strong men. It was frightening and our oldest senior citizens never came back. We received threatening phone calls on our answering phone, etc. But we persisted and we got the signatures--I think primarily because we dealt with the facts. When we turned in the petitions we found that you must have an affidavit attached to each petition --numerical order. We got it done."

She added, "The wording on the ballot for our initiative was very confusing--even to us. It was given to us by the City Corp Counsel. What confused us even more was the fact that our Senior Senator and our Mayor appeared on TV saying 'to save DeRussy you must vote No.' The newspapers wouldn't print out letters and so many people told us, 'No matter what you do, they will get what they want.' As we registered more voters, we could feel the climate changing. Although we lost, I will say that everyone who participated in this is a better person for having done it."

Phil Estermann, Sandy Beach: Agreeing with the previous speakers, he said, "Nothing clears away fuzzy thinking about participation in democracy better than gathering petition signatures for an initiative. What we did was a last-ditch effort--we were forced into it by what the City Council did in voting to put a major housing development opposite Sandy Beach. It was unnecessary because by the mid-70s Oahu already had enough residentially-zoned land for 2.5 million people. In the 1977 General Plan, when a big parcel at Queen's Beach was downzoned, 30 acres mauka of the highway next to it was overlooked. Then, in the early '80s, when Kaiser came to the City Council to ask to put 10' high homes on this area along a scenic drive, there was no outcry. In April of '86 their application got hung up on the fact that their sewage treatment plant had deteriorated. When the Council then did hold a hearing on this development, many important interest groups came before them to say, 'Please don't give them this permit'. Those testifying against Kaiser included the ILWU, the hotel workers, leaders of tour group companies and the major environmental groups. The Coastal Zone Management Act told the States and Counties to identify scenic coastal resources and when Honolulu did, the Sandy Beach drive was one of the top 5. After that, the City Council held a workshop on Sandy Beach, but restricted the testimony. They gave Kaiser the permit on a 5-4 vote, which was televised. This was enough to generate the kind of response we needed. That particular stretch is valued by local people. Kaiser then filed a lawsuit to halt our petitions.

After intermission it was announced that the meeting was an information meeting, so could not be turned into an action committee as some people wished. However, Senator McMurdo, said the people who were attending could certainly meet somewhere else later to do this, if they wished.

Rep. Kanohe, Kauaiians for Nukolii: He said he helped lead the second initiative effort to gain approval for the development at Nukolii "because the developer had already spent so much money on it that the image of Kauai would be ruined in the eyes of the world if the development did not proceed." (At this point, three of the Sandy Beach supporters--all men--got up and left the auditorium.) He also said the Kauai economy was in a downturn and the people there needed the development for jobs, etc. The issue is still before the courts.

Martin Wolff: He spoke on the use of initiative for land use matters. Saying he was "neither honored nor pleased to be here today," he commented that in "this enlightened age, I'm appalled that we are meeting here to discuss such a thing as initiative. The State Constitution says all power rests in the people. We delegate that power to our elected representatives. As a land owner I have had grave reservations about land zoning through initiative. However, no one can abridge my democratic right to speak up through the initiative process."

He said the reason we don't have the initiative process in the State of Hawaii is simply because the legislators haven't adopted the procedures. If they won't do it, then the courts should.

"Any politician who is elected on the vote of the people is a hypocrite if they say the people cannot vote on anything else," he commented. In addition, it is "contradictory to say people can use initiative, but developers cannot. It doesn't matter who pays for it."

Zoning, he said, has always been political. Elected officials make the final decision, but the public has the right to make the final, final decision through initiative. In his opinion there is simply no justification to single out land use planning and say it cannot be done through initiative.

Regarding Sandy Beach, he said it is apparent that the special interests are simply using the courts to intimidate petition signers.