

Legislature Debates Viet War's Legality

By Jack Welter

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SACRAMENTO — Two bills to exempt Californians from serving in an undeclared foreign war awaited further hearing today after an opening debate in which the Legislature was urged to challenge legality of the Vietnam war and told, conversely, it is without power to act.

After three hours of argument, the Assembly Government Administration Committee continued hearing to June 17 when Chairman Carl A. Britschgi (R-Redwood City) said a long list of uncalled witnesses will be given a chance to testify "if it takes another 24 hours."

"We're going to listen to the little people after we get through with the pros," Britschgi commented.

'Picnic For Peace'

An overflow crowd of college and university students packed the hearing room and streamed into adjoining hallways as the "pros" opened up on the nearly identical measures by Democratic Assemblymen John Vasconcellos of San Jose and Bill Greene of Los Angeles.

Scores of the students participated in a midday "picnic for peace" and many of the overflow returned to Capitol Park later to listen to the committee proceedings via an outdoor public address system.

The authors and their supporting witnesses emphasized a provision directing the state attorney general to carry the issue of the Vietnam war's constitutionality to the U.S. Supreme Court on behalf of any petitioning Californian assigned to military service in Southeast Asia.

"As you have already heard from four distinguished law professors, this bill is designed to enable this state to raise the question of the constitutionality of undeclared foreign wars in the Supreme Court," said Art Shartsis, chairman of a statewide students legislative committee.

that "the state can raise issues which individuals, or even groups of individuals cannot raise on their own."

Sacramento attorney Anthony Kennedy, a University of Pacific law school faculty member, and San Francisco attorney George T. Davis, speaking for the California Trial Lawyers Association, headed the opposition.

Kennedy urged substitution of a resolution asking Congress to act.

"The great weight of constitutional authority dooms these efforts here," he declared.

'Loaded' Bill

"The lower courts have decided the issue on its merits, and they have decided against you. This bill is loaded with procedural traps,

Davis said the bill "basically misconceives the powers of the Legislature" and the issue is a federal question with other channels open for seeking relief.

He said he is considering a court test on behalf of a soldier-client who is charged with "deliberate murder" in the My Lai massacre. Although declaring he is a Democrat, dislikes President Nixon, abhors the war and would be trying to avoid service if he were subject, Davis added:

"Congress is responsible for what's going on. Congress is appropriating money for the war, and the Gulf of Tonkin resolution was authority for the President to wage this war.

"President Johnson told Congress to its face that if they didn't believe in the war to repeal the resolution. I think Congress is wrong. The war ought to stop, but we better be careful how we stop it."

'Without Action'

He said the Constitution delegates the power to declare war to Congress, "yet the Vietnam war has been waged by both Democratic and Republican presidents for nearly a decade "without congressional action."

Law school faculty members Lerry Velvel of the University of Kansas and Michael Smith and Robert O'Neil of UC's Boalt Hall agreed that the nation faces a "constitutional crisis" and needs, according to Velvel, "a judicial decision saying to the President, 'If you want to fight a war you must get a declaration from Congress.'"

The proponents contended California should join an impending Massachusetts legal action to enhance the chances of the Supreme Court accepting jurisdiction.

Opponents

Velvel acknowledged under questioning that he had filed unsuccessful federal court actions "against two former Presidents" and the courts rejected them as "political" issues.

O'Neil contended, however,

Assemblyman Carlos Bee (D-Hayward), identifying himself as a father of five, told Shartsis he wants the war to end "but I also want the disorder to end on campus . . . we have to have law and order on the campus."

"To frame this matter in those narrow terms is wrong," Shartsis replied. "We feel that the primary officer in the country is not obeying the law. How do you expect us to do it when he doesn't?"