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9/11/62

Memorandum No. 55(1962)

Subject: Study No. 52(L) - Sovereign Immunity (Liability for Damages from Mobs and Riots)

Attached is a copy of the tentative recommendation relating to damages by mobs and riots. The proposed statute appears as Chapter 4 on pages 78 and 79 of the general liability statute and the recommendation appears on pages 31-34.

Copies of the communications we have received in regard to this recommendation are also attached. They are:

Exhibit I (pink) - First Report of State Bar Committee to President and Board of Governors of State Bar.

Exhibit II (yellow) - Letter from Los Angeles County Counsel.

The State Bar objects to this statute. It thinks that the existing law has not been used because it refers only to property damage and not personal injury. The broadened coverage will probably cover injuries inflicted in labor disturbances, and the Committee apparently believes that there should be no public liability for such injuries. The Commission should note that the statute is inconsistent with the principle that there should be no liability for failing to enforce the law.

The County Counsel approves of the change in the theory of liability from absolute liability to negligence. He is concerned, though, with the definitions. He expresses a belief that the definition of "mob" will cover labor violence but will not reach most of the violence directed towards minority groups. The County Counsel also suggests that the "riot" definition be

revised in some way to eliminate groups travelling in vehicles.

So far as the basis of liability is concerned, the County Counsel suggests that the statute be made clear that due diligence should be determined in the light of available personnel and equipment. This statute should not be a means for providing jury review of the wisdom of the governmental decisions made at budget time.

Respectfully submitted,

Joseph B. Harvey  
Assistant Executive Secretary

8/16/62

EXHIBIT I

EXTRACT

from

STATE BAR COMMITTEE ON SOVEREIGN IMMUNITY

First Report of Committee to the President  
and Board of Governors of the State Bar  
of California

LIABILITY FOR DAMAGES FROM MOBS AND RIOTS

The Committee recommends against the enactment of this proposed special statute for damages from mobs and riots. In this connection, it is noted that under Government Code Section 50140, et seq., formerly Political Code Section 4452, there have been not more than six or seven cases which have gone up on review, and with a single exception they all date back to the nineteenth century. It is believed that the reason for the relatively sparse use of this statutory right of recovery lies in the fact that it was confined to damage to property and did not cover injury to persons.

The Committee is apprehensive that if local public entity liability for damages from mobs and riots is to be extended to include personal injury, substantial potential liability under the statute could stem from mass or illegal picketing and the exercise of violence against non-strikers. A picket line frequently involves ten or more persons, and

not infrequently becomes tumultuous.

The Committee furthermore notes that liability for failure to enforce the law and maintain peace is to be made the subject of a more comprehensive draft statute covering the field of police protection and law enforcement, and that the problem of personal injury arising out of failure to control mobs and riots more properly belongs in the more comprehensive statute.

8/16/62

EXHIBIT II

EXTRACT

from

LETTER FROM OFFICE OF THE LOS ANGELES COUNTY COUNSEL

July 20, 1962

4. Liability for Damages for Mobs and Riots.

We are in favor of the Commission's suggested change in the basic theory of liability which abandons the unrealistic absolute liability basis and substitutes therefor a basis of liability in cases of fault where the local authority fails to exercise reasonable care or diligence. We also favor the provisions in the second sentence of Section 905.2 which recognizes the fact that there may be an overlapping jurisdiction between local law enforcement agencies and is consistent with the general principle of comity between the law enforcement agencies wherein matters arising in a city or special district which has its own law enforcement agency are normally handled by that agency and the Sheriff's Department is not concerned in matters arising in such areas unless it comes to the attention of the Sheriff from a reasonably reliable source that the local agency is unable or unwilling to cope with the situation.

Of course we also favor the provisions which make contributory negligence a defense which provide that a person participating in any mob or riot cannot sue the agency and which provide for indemnification of the agency by participants.

We believe that the provisions of Section 905.1 (b) "or for the purpose of exercising correctional or regulative powers over any person by violence and without lawful authority" included in the definition of a "mob" may be too broad and too vague and may cover situations which the Commission did not intend to be covered. We understand that the purpose of this

provision is to control persons who may wish to intimidate members of minority races moving into an area and to cover matters of such intimidation generally. We are advised by our Sheriff's Department that intimidation of minority races is practically always done on a covert basis with no warning and usually not done by groups. Such action usually consists of going past the location in a vehicle and throwing a rock through the window or burning lawns or putting hoses through mail slots in the late hours of the night. The suggested language in the definition of "mob" could, however, cover cases such as the intimidation of strike breakers or persons crossing picket lines; influencing of union elections; goon squads used in labor disputes or cases of vengeance or reprisal between juvenile gangs. We believe it might be appropriate to review definition of "mob" in the light of the information we have received from our Sheriff's Department.

The definition of "riot" in Section 905.1 (c) may create a problem for law enforcement in certain areas. We are advised by our Sheriff's Department that it is a regular thing in certain areas in this county to have groups of persons larger than 10 in number cruising around in a group in cars for the purpose of crashing parties or otherwise making trouble. The fact that these groups move so fast makes it difficult for law enforcement to control them. They may get a report that a group is at one location and by the time a radio car gets there the group is some distance away creating another disturbance. Experience in this area has shown that these groups move fast and cover large areas in one evening. Another situation which we understand would come under the definition of "riot" would relate to goon squads following merchandise coming out of struck plants wherein groups of men, more than ten in number, may follow such trucks and seek to damage the truck and the merchandise therein and injure personnel on the truck. This has proved to be a difficult situation to control.

The Sheriff's Department here does not feel that this provision would create too difficult a problem with relation to matters such as juvenile gang fights, free-for-all fights in bars or dance halls or cases such as the recent disturbances at Zuma Beach, in Alhambra or in Griffith Park, the first two of which were the scene of teen-age disturbances and the third of which involved the attempted rescue of a person placed under arrest.

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Since the most difficult problems for law enforcement appear to arise in connection with groups travelling in vehicles we believe consideration might be given to a definition which would recognize the difference between groups primarily travelling in vehicles and other groups.

As we have previously indicated, we favor the provisions of Section 905.2 making a local agency liable only for failure to exercise reasonable care or diligence to prevent or suppress a mob or riot. Whether or not the care or diligence used was reasonable must of course be judged in the light of available personnel and equipment. Since the provision of personnel and equipment is an incident of government governing, it would be unwise to let a jury second-guess these governmental decisions made at budget time in providing for the level of police protection that has been provided. It would be impossible for government to govern effectively if these questions could be reopened in connection with damage actions. The ultimate question must be judged on the basis of what use was made of the available facilities.

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July 1, 1962

CALIFORNIA LAW REVISION COMMISSION  
School of Law  
Stanford, California

TENTATIVE RECOMMENDATION

of the

CALIFORNIA LAW REVISION COMMISSION

relating to

Liability for Damages from Mobs and Riots

NOTE: This is a tentative recommendation prepared by the California Law Revision Commission. It is not a final recommendation and the Commission should not be considered as having made a recommendation on a particular subject until the final recommendation of the Commission on that subject has been submitted to the Legislature. This material is being distributed at this time for the purpose of obtaining suggestions and comments from the recipients and is not to be used for any other purpose.

July 1, 1962

TENTATIVE RECOMMENDATION

of the

CALIFORNIA LAW REVISION COMMISSION

relating to

Liability for Damages from Mobs and Riots

Sections 50140 through 50145 of the Government Code impose absolute liability upon cities and counties for property damage caused by mobs or riots within their boundaries. Similar laws exist in many states. These laws are patterned after the English Riot Act of 1714 which, together with its successor statutes, has imposed liability on local police districts for mob and riot damage for almost 250 years.

The Commission has concluded that the general purpose underlying these statutes is sound. Local government is responsible for the maintenance of peace and order and should be liable in damages when it negligently fails in its responsibility. Imposition of liability for damages caused by mobs or riots provides local policing agencies with a strong incentive to prevent the deterioration of law enforcement to the point where mob violence is apt to occur. However, the California statute should be revised to eliminate several defects and anachronisms. Accordingly, the Commission recommends:

1. The theory upon which liability is presently based--absolute liability without fault--should be abandoned. There is no logical reason for imposing such a strict standard upon local government. Where a local public entity has done all that reasonably could be expected under the circumstances to prevent or quell a mob or riot, the imposition of

absolute liability for damages resulting from the disturbance serves no defensible purpose for it provides no greater incentive to act. In line with several other states which have changed the theory upon which liability for mob or riot damage is founded, California should impose liability only where the responsible local authority fails to exercise reasonable care or diligence to prevent or suppress the disturbance.

2. Liability for mob or riot damage should be imposed upon all local public entities that have the duty or have undertaken to maintain peace and order within their boundaries. The existing law applies only to cities and counties. Yet community services districts and police protection districts also may undertake to provide police protection service to maintain peace and order. Under the existing law, if mob or riot damage occurred in such a district, the county would be liable even though it had no opportunity to prevent or suppress the mob or riot.

3. Local policing agencies should be liable for death or personal injuries as well as for property damage caused by mobs or riots. The rationale that supports recovery for property damage applies with equal vigor to death or personal injuries resulting from civil disorders. Several states have extended their mob or riot damage statutes to provide compensation for personal injuries. Such statutes implement the public policy against lynching and mob intimidation of minority groups, for they encourage local policing agencies to be diligent in preventing such occurrences.

4. The terms "mob" and "riot" should be defined. Neither term is defined in the present statute imposing liability for mob or riot damage (Government Code Sections 50140 through 50145). Although there

is a definition of "riot" in Section 404 of the Penal Code, it is uncertain whether the Penal Code definition is applicable to Government Code Sections 50140 through 50145, or whether the "riot" referred to in Sections 50140 through 50145 is a common law riot. Under the Penal Code definition, a riot is any use of force or violence, disturbing the peace, by two or more persons acting together without authority of law. A common law riot is a tumultuous disturbance of the peace by three or more persons who, without lawful authority, seek to accomplish a common purpose, using force if necessary, in such a manner as to alarm and frighten.

The Penal Code definition is too broad for general use in the mob or riot damage statute, for this definition would classify virtually any violent crime committed by more than one person as a riot. On the other hand, the common law definition does not reach mob violence committed without great tumult.

The recommended legislation contains definitions of "mob" and "riot" that are similar to definitions that appear in the statutes of several other states. The definition of "mob" states the same number of participants (two) mentioned in the Penal Code section. This is appropriate because of the specific intent requirement in the substantive definition of mob, which embraces a rather narrow area of particularly reprehensible conduct somewhat akin to "vigilante" activity. On the other hand, the requisite number of participants to constitute a "riot" has been raised to ten. To permit imposition of liability for the activities of a fewer number--as, for example, where several persons in a single automobile tumultuously engage in a violent crime--would,

in effect, largely circumvent the general rule of immunity for failure to enforce the law.<sup>1</sup>

5. Anyone who aided, abetted or participated in a mob or riot should be denied compensation for damages resulting from the mob or riot. Compensation should be similarly denied to anyone guilty of contributory negligence. The existing law is too narrow, for in terms it bars recovery only where a person negligently aids or abets a mob or riot.

6. A public entity that is liable under the mob or riot damage statute should have a right of indemnity in the amount of such liability from any person who aided, abetted or participated in the mob or riot. In addition, the public entity should be indemnified in an amount to be fixed by the court for any necessary expenses incurred in defending against liability under the statute, including costs and reasonable attorneys' fees.

7. The special provisions found in the existing law governing venue and the time within which actions for mob or riot damage may be brought should not be retained. The general provisions relating to the venue of actions make the special venue provisions unnecessary. The claims statute applicable to all local public entities provides entities with adequate notice; hence, the special statute of limitations also is unnecessary.

8. Other provisions of the existing law requiring the issuance of warrants and the levy of taxes to pay judgments are unnecessary and

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1. The liability of public entities for police and law enforcement activities is the subject of a tentative recommendation of the Law Revision Commission soon to be distributed.

redundant in light of the Commission's recommendation regarding the  
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payment of tort judgments.

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The Commission's recommendations would be effectuated by the enactment of the following measure:

An act to amend Section 340 of the Code of Civil Procedure, and to add Article 5 (commencing with Section 905.1) to Chapter 4 of Division 3.5 of Title 1 of, and to repeal Article 6 (commencing with Section 50140) of Chapter 1, Part 1, Division 1, of Title 5 of, the Government Code, relating to liability for mob and riot damage.

The people of the State of California do enact as follows:

SECTION 1. Article 5 (commencing with Section 905.1) is added to Chapter 4 of Division 3.5 of Title 1 of the Government Code, to read:

Article 5. Damage by Mobs and Riots

905.1. As used in this article:

(a) "Local agency" means a city, county, police protection district or other local public entity that has the duty or has undertaken to maintain peace and order.

(b) "Mob" means any collection of individuals, two or more in number, assembled for the unlawful purpose of offering violence to the person or property of anyone supposed to have been guilty of a violation of the law, or for the purpose of exercising correctional or regulative powers over any person by violence and without lawful authority.

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2. See Tentative Recommendation of the California Law Revision Commission relating to Payment of Tort Judgments by Local Public Entities (July 1, 1962).

(c) "Riot" means a tumultuous assembly of ten or more persons engaged in disturbing the peace who injure or threaten to injure persons or property by force and violence or who use or threaten to use force and violence against anyone who opposes them in the execution of their purpose.

905.2. A local agency is liable for death or for injury to persons or property proximately caused by a mob or riot within its boundaries if the local agency fails to exercise reasonable care or diligence to prevent or suppress the mob or riot. A county within which a mob or riot occurs is not liable under this section where the mob or riot occurs within the boundaries of another local agency that has the duty or has undertaken to maintain peace and order unless the county fails to exercise reasonable care or diligence to prevent or suppress the mob or riot after the county has notice, express or implied, of the failure or inability of the other local agency to prevent or suppress it.

905.3. A local agency is not liable under this article for the death, or for injury to the person or property, of any person who aided, abetted or participated in the mob or riot that caused the death or injury. A local agency is not liable under this article if the plaintiff or his decedent was contributorily negligent.

905.4. Any person who participated in or who aided or abetted a mob or riot shall indemnify any local agency liable under this article in the amount of such liability together with an amount to be fixed by the court for all costs and expenses necessarily incurred by the local agency in defending the action under this article, including reasonable attorneys' fees.

905.5. Any action brought under this article for damage to the levees or other works of reclamation of any district shall be prosecuted by the Attorney General in the name of the people of the State of California, and the amount recovered shall be paid to the treasurer of the county, who shall credit it to the district.

SEC. 2. Article 6 (commencing with Section 50140) of Chapter 1, Part 1, Division 1, of Title 5 of the Government Code is repealed.

SEC. 3. Section 340 of the Code of Civil Procedure is amended to read:

340. Within one year:

1. An action upon a statute for a penalty or forfeiture, when the action is given to an individual, or to an individual and the State, except when the statute imposing it prescribes a different limitation;

2. An action upon a statute, or upon an undertaking in a criminal action, for a forfeiture or penalty to the people of this State;

3. An action for libel, slander, assault, battery, false imprisonment, seduction of a person below the age of legal consent, or for injury to or for the death of one caused by the wrongful act or neglect of another, or by a depositor against a bank for the payment of a forged or raised check, or a check that bears a forged or unauthorized endorsement, or against any person who boards or feeds an animal or fowl or who engages in the practice of veterinary medicine as defined in Business and Professions Code Section 4826, for such person's neglect resulting in injury or death to an animal or fowl

in the course of boarding or feeding such animal or fowl or in the course of the practice of veterinary medicine on such animal or fowl;

4. An action against a sheriff or other officer for the escape of a prisoner arrested or imprisoned on civil process;

~~[5.--An action against a municipal corporation for damages or injuries to property caused by a mob or riot;]~~

[6.] 5. An action against an officer to recover damages for the seizure of any property for a statutory forfeiture to the State, or for the detention of, or injury to property so seized, or for damages done to any person in making any such seizure.