

## MINUTES

Meeting called to order at 9:15 a. m. by Chairman Monroe on March 25, 1969.

Committee members present: Senator Monroe, Chairman  
Senator Swobe  
Senator Young  
Senator Dodge  
Senator Hug  
Senator Christensen  
Senator Bunker

## Guests:

Mr. Lloyd Katz, President Nevada Theatre Corporation, Las Vegas, Nevada  
Mr. Bill Browne, Manager, Fox West Coast Theatres, Reno Nevada  
Mr. Ken Workman, Manager, United Artists Theatre Circuit, Reno, Nevada  
Mrs. Shirley Wedow, Nevada PTA Association, Sparks, Nevada  
Mrs. Reeder, PTA Association, Carson City, Nevada  
Mr. Robert Armstrong, Professor, University of Nevada  
Mr. Kenneth J. Carpenter, member of Intellectual Freedom Committee of the Nevada Library Association.  
Mr. Americo Chiarito, Reno, Nevada  
Mr. Joseph J. Anderson, Carson City, Nevada  
Mr. Jack Gardner, Carson City, Nevada  
Ann Amaral, Vice-President, Nevada Library Association

Mr. Katz was introduced by Chairman Monroe. Mr. Katz was not able to be present at the previous hearing on AB 70 due to the weather so was permitted to present his testimony today.

Mr. Katz identified himself as the operator of three theatres in Las Vegas for the past 17 years and was associated with the motion picture industry for the past 26 years. He was representing United Artists, National General, Pacific Theatres and Cragin Theatres.

AB 70 was primarily drawn with the pornographic magazines in mind but somewhere along the way the movie industry was drawn into it. They were two unrelated categories. The theatre industry had controls handled by the box office and they could say who shall and who shall not enter the theatre. The theatres offer education as well as entertainment to the public and also made their facilities available to civic groups as the Boy Scouts, service clubs, public benefits and they also worked with the schools with tie-in pictures for educational purposes. The motion picture industry was concerned about the youth of today. In November of 1968 the industry established a

voluntary rating system. This system was in planning stages for over a year and finally in November they came up with a satisfactory code for all pictures produced after November 1968. All of the producers had to agree on this system. It was not a perfect system but was a guide that could be used by all.

He urged the committee to permit the movie industry to function under their own controls and to remove any control by the legislature from this bill until the industry had a chance to prove their system would work and until such time that all films are rated. It should be about a period of one year. Of course, there will always be a few older films re-run that would not have a rating.

Most states consider 16 years of age and less as being a minor. Many states issue work permits at age 16, most states will issue a drivers license at age 16. Most sociologists feel that the impressionable age is between 5 and 12 years old. Theatres hire high school and college students in the 16-18 age bracket as part time employees and if the age limit is set in this bill as 18 they cannot hire anyone under that age to work in the theatre which could cause a financial burden on many students.

It is more difficult to distinguish the age of a 16 or 18 year old than it is between a 14 and 16 year old so it would be much easier to control that age group. Many states are considering lowering the voting age so it is an admission that youth is more mature now at an earlier age.

They spent a lot of time researching and found it was illegal to lower the age limit so they were asking that the entire section be removed from this bill.

He consulted with the president of the Las Vegas Parent Teachers Association and the age of 16 was acceptable.

An R rated picture will not permit anyone that has not passed his 16th birthday to attend and he must be accompanied by a parent. An M picture alerts the parent that they should research the picture before allowing their child to attend. An X picture will not permit anyone that has not had his 16th birthday to attend at all, whether with a parent or not.

Senator Young brought up the fact that in the newspaper ads the coding for the pictures was so small you had to search for it, however the larger print was always worded to catch the eye.

Mr. Katz was aware of this and advised the ads are set up by the producers of the pictures and that had no control over that. He had suggested to the Las Vegas press, but had no cooperation, that a guide with time schedule and coding of each picture be printed in a separate article.

Senator Hug asked about hiring part-time students. He asked if the age limit was set at 18, could they hire younger students?

Mr. Katz advised they were hired with the approval of the schools under the Distributive Education program and hired only students with good grades but they would not be able to hire any one under 18 if it passed with that as the dividing age.

Mr. Americo Chiarito asked Mr. Katz if sex was the only basis on which films were rated.

Mr. Katz said violence was also used. He felt the industry as a whole had too much invested to risk loosing by having a nationwide censorship placed on them. To prevent this they established the code rating system.

Mr. Carpenter asked Mr. Katz how the code would be enforced. He answered it would be up to the individual theatre owner to enforce it within his own theatre.

Chairman Monroe stated if the control was removed there would be no enforcement if a minor was permitted to attend a picture coded for adults only. There would be no enforcement upon the theatre owner to make him follow the code.

Senator Christensen remarked the committee was against the 16 year limit but would go along with the 18 year age.

Mr. Robert Armstrong, a professor at the University of Nevada had a statement from interested people and he introduced Mr. Kenneth Carpenter who presented it. It was signed by Mr. Harold G. Morehouse, President of the Nevada Library Association, Mr. Elmer R. Rusco, President, Northern Nevada Chapter of American Civil Liberties Union and by himself, Kenneth Carpenter, member of the Intellectual Freedom Committee of the Nevada Library Association. (Copy attached).

Chairman Monroe asked Mr. Carpenter to please leave the statement for the committee, however there was not time to read it at this time.

Mr. Carpenter argued the bill was too restrictive and felt the state was getting into dangerous ground delegating its authority to control sale of magazines. The enforcement is left up to the local police officers. He felt you could not define obscenity and some did not know the difference between art and obscene pictures.

Senator Dodge said he is a parent and felt that parents were too busy to go around and inspect the magazine stands to see what was available for minors to purchase. They could only go so far in the exercise of parental responsibility.

Senator Swobe pointed out when this bill was first introduced you could purchase Life, Time and several "smut" magazines at Bergers News Stand in Carson City, but at the present time you could find

Life and Time still on the shelves, however the "smut" magazines were gone.

Mr. Armstrong felt if a parent did a good job in raising their child from the time they were born they had nothing to fear - except the state.

Jack Gardner stated he wanted his children to see pornography but under this bill he would not be able to purchase them because they would not be available.

Senator Monroe stated that was the entire idea of the control.

Senator Young stated he did not want his children to see it. He told Mr. Gardner he could do as he pleased but he was speaking for his constituents and they all wanted controls.

Mr. Americo Chaiariot stated the United States Constitution provided for rights and he felt this would be proven as unconstitutional.

Mr. Katz stated motion pictures and magazines are entirely different categories and they could not hope to achieve desirable results with covered wagon rules in the age of space.

Chairman Monroe closed the hearing. Guests left.

Mr. Daykin was asked to come in.

SB 303 - Adopts uniform principal and income law.

Both Chairman Monroe and Senator Swobe discussed this with Mr. McGee, Trust Department of the First National Bank. Mr. McGee was not against it but stated Mr. Kwapil also of the Trust Department had reservations about it.

Senator Dodge discussed this with a CPA and was advised the banks made their own rules so they could have control of their trusts. If they had to enter into a few law suits they could change the rules to fit their needs. He felt this was wrong and guidelines should be set for all to follow.

Senator Swobe moved "Do pass".

Senator Young seconded.

Motion carried.

AB 399 - Establishes guardianship procedures and designates duties of guardian.

Senator Swobe discussed this with Mr. McGee and he felt it was good legislation.

Mr. Daykin suggested to amend 88.

Senator Swobe moved to amend and do pass.  
Senator Young seconded the motion.  
Motion carried.

SJR 23 - Proposes to amend judicial article of Nevada constitution.

Mr. Daykin advised this had been changed to take in all of the recommendations previously made in the committee meetings.

Senator Young asked Mr. Daykin to explain the justice of the peace and municipal court system.

Mr. Daykin said the justice of the peace will be merged into county courts. The mechanics of these courts should be provided in 1971 by the next session of the legislature if it readopts this resolution. There would be a single county court in the smaller counties (more than one in the larger counties as they are needed). Limitations would be set by the legislature. This will replace the municipal and justice courts as trial courts with an appeal to the district court. A single county judge could fine for someone pleading guilty to a minor conviction as speeding, etc. but if the charge were contested he could not hold a trial. As an example there would be a justice of the peace in Elko and magistrates located in Wells, Carlin, Jarbidge, etc. There would be no trials held by the magistrates but the trial would have to be held in Elko by the justice of the peace. The law does not say the magistrate can not hold a trial if need be. They are not prohibited by law, merely by procedure.

The legislature would have the power to appoint lawyers as trial judges as they have the power to appoint the magistrate.

Senator Monroe asked Mr. Daykin to explain lines 11 and 12 on page 9.

Mr. Daykin advised at the start of this system it will be the same as the district courts now but will be called the single court. There will be geographical divisions established. The justices of the peace will be put in by election. The governor would fill a vacancy from the list submitted to him by the Board and would serve until the next election.

Senator Dodge stated this would have to come up for approval again at the next session which would give ample time to prepare details for the implementation of the lower court system. He felt this should be put out if it met all of the things discussed in the joint committee meetings.

Senator Young asked Mr. Daykin if he felt there were any flaws.

Mr. Daykin felt it would work and could see no flaws. It was patterned after the Nebraska statute.

Senator Young moved "Do pass".  
Senator Dodge seconded  
Motion carried.

AB 117 - Specifies times when one spouse may testify against the other.

Mr. Daykin explained it was now unlawful for one spouse to testify against the other without consent of either. This broadened the exceptions.

Senator Dodge asked if this was standard in other states?

Mr. Daykin advised it was established more by cases rather than by laws. Years ago it was an established fact that the husband was the head of the household but it is now recognized as equal rights of each spouse and they are free to speak out. It would not undermine a marriage as it would be already at that point if there was occasion for one to testify against the other.

Senator Young moved "Do pass".  
Senator Dodge Seconded  
Motion carried.

AB 211 - Makes possession of narcotic or dangerous drug prima facie evidence that possession was unlawful.

Senator Dodge moved "Do pass".  
Senator Young seconded.  
Motion carried.

AB 54 - Prohibits sale of hallucinogenic drug and increases penalty for unlawful use or possession.

Mr. Daykin questioned the constitutionality of Sub-section 2 under Section 1, "incorporated under the laws of this state". It did exempt the peyote used by Indians but he felt you could not require a religious organization to incorporate. The Indians are already incorporated under the laws of Nevada as the Native American Church .

Section 2 increases the penalty from a gross misdemeanor to a felony and also puts the penalty for LSD up to that of marijuana.

Senator Dodge mentioned Nevada was the first state to put LSD on the drug list but evidently they did not put the penalty for it's use high enough.

Senator Young would like to hear Harry Reid on the need for this.

(Mr. Reid was asked to come in.)

Mr. Reid stated there was need for this in the Las Vegas area. It would give probation for the first offense to anyone under the age of 21 who sells. He felt LSD was actually more harmful than marijuana and felt the penalty should be the same for use and sale.

Mr. Daykin told Mr. Reid he would prefer to strike out line 16 on page one as he felt with that left in it would be unconstititutional.

Mr. Reid was agreeable.

Senator Young moved to amend and "do pass".  
Senator Bunker seconded the motion.  
Motion carried.

AB 59 - Revises procedure for filing affidavits alleging judicial.

Mr. Daykin stated there might be a situation where there was prejudice by the judge. This would provide an affidavit filed at least 10 days before the hearing in a contested matter so it could not be used as an excuse to further delay a matter.

Senator Christensen moved "do pass".  
Senator Young seconded the motion.  
Motion carried.

AB 249 - Provides for uniform county clerk's fees.

Senator Dodge moved "do pass".  
Senator Bunker seconded.  
Motion carried.

AB 252 - Increases penalty for crime of nonsupport of children.

Mr. Daykin stated this was not applicable to alimony. Would apply only to non support of children and would increase the penalty as the length of time of non payment increases. After a six month period they would have some control over the non-supporter.

Senator Christensen moved "do pass".  
Senator Young seconded.  
Motion carried.

The meeting was adjourned at 10:45 a. m.

Respectfully submitted,

Jeanne M. Smith, Secretary

APPROVED: \_\_\_\_\_

It has been said that the law on which A.B. 70 is based, a New York State statute, has been held constitutional by the U.S. Supreme Court. Such is not the case. A small section of it (Sec. 484-h), that part dealing with certain kinds of magazines, has received judicial review; the remainder has not. It should be stressed here, though, that if A.B. 70 is passed as currently written it will not correspond to the New York law in one significant aspect, viz., the age under which young people may not purchase certain kinds of materials in the New York law is seventeen; in the Nevada bill the age is eighteen. It has been reported that the chairman of this committee has said that Nevada law requires the use of this latter age limit. Thus, no part of the bill under consideration can be assured of constitutional protection.

The standard argument--standard because it is a good one--raised against censorship is that no causal relationship has been proven between exposure to the materials proscribed in this bill and any kind of antisocial behavior. There is in fact a growing body of evidence to show that among those exposed to reading material of any kind the incidence of antisocial behavior is lower than among those who do not read. The argument here is that the very kind of materials mentioned in A.B. 70 have a purgative effect, that they serve to release tensions rather than to create them.

The evidence certainly is not all in. But a commission created by Congress and appointed by President Johnson in 1967 has been charged with the responsibility of studying these matters. The Commission on Obscenity and Pornography, authorized under Public Law 90-100, is to report its findings to the President and the Congress no later than January 31, 1970. It would therefore seem premature to enact legislation in Nevada which is based on suppositions that may be proved erroneous by the commission's report.

To return to constitutional questions, A.B. 70 establishes a concept which has been called "variable obscenity," i.e., certain kinds of materials are not considered obscene in some instances and are therefore protected by the constitution, while in other instances they are considered obscene and do not have constitutional protection. There is no practicable way that a bookseller or a merchant who keeps a rack of paperbacks in his place of business can restrict the exhibition and sale of books and magazines to minors without at the same time forbidding their exhibition and sale to adults. He may, because of his law-induced fear of arrest, simply not stock materials which he thinks might fall under the edict; he will then have been teased, with legislative approval, into the constitutional trap of prior restraint, and the Supreme Court has ruled many times that it will have no truck with prior restraint.

It is to be assumed that the intent of A.B. 70 is not to punish the book-



seller but to stop access to materials which are deemed by some to be harmful to people under eighteen. Yet it can make an outlaw of the bookseller, make of him a "pusher" of vaguely defined material of no proven harmfulness. Such a law is more harmful than the material it is supposed to ban.

Nothing about enforcement is said in the bill, but it can hardly be doubted that it is the police officer who will enforce it. Yet no police force in the state or in the country has as a prerequisite for hiring or retention the ability to distinguish clearly between the materials which are so ill-defined in this bill and those which are not included. In fact, in a ruling in Denver earlier this year it was held that a judge, not police officers, must make a preliminary determination of the probable obscene character of materials. It was further held that a search warrant must be issued. Yet A.B. 70 is silent on these matters.

It was stated earlier that booksellers are not the target of this bill. Whatever the intent may be, there are clearly two targets: (1) the freedom to choose what one will read, which one must have to live and grow responsibly in a free society, and (2) young people themselves. To attack young people in such a way under the guise of protection is to cripple their growth. It can only lead to generations of crabbed old men and women who are ashamed and even afraid of their own bodies.

The freedom to read and the freedom to choose are precious ones, and they must be protected. A.B. 70 is bad legislation. It should be defeated.

*Harold G. Morehouse*

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President  
Nevada Library Association

*Kenneth J. Carpenter*

Kenneth J. Carpenter  
Member, Intellectual Freedom Committee  
Nevada Library Association

*Elmer R. Rusco*

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President Northern Nevada Chapter  
American Civil Liberties Union

# NEVADA LIBRARY ASSOCIATION

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## STATEMENT ON AB70, PROHIBITING EXHIBITION AND SALE OF OBSCENE MATERIAL TO MINORS

We all realize that there is some appalling trash in our bookstores and on our newsstands. The impulse to try to curb the unrestricted sale of this material to juveniles is understandable. However, when we attempt to legislate against the sale of any type of book or magazine, we run into a serious problem, because such legislation tends to infringe upon one of our most valued freedoms. This is the freedom to read, write, and publish what we wish, without the interference of a government telling us what's good for us or bad for us. Totalitarian governments censor their presses; librarians generally feel that the trashy portion of the total output of a free press does less harm than might be done by the restrictions of a government authorized to censor.

The Nevada Library Association, as well as the American Library Association and most librarians in general, has a dislike for any law or proposed law restricting access to books or magazines.

AB70, while evidently not aimed at libraries, does have the effect of causing a bookseller to have to consider each item in his stock, worry about whether it will meet the moral and ethical standards of the policeman on his beat, and segregate the items that might fail to meet the standards of this policeman, who is not called upon to play the role of literary critic and guardian of the morality of our children's reading material.

We feel that policemen have enough to do in carrying on their fight against crimes against person and property, and that censorship of ideas and the printed word is not their proper concern. Neither is it the concern of the State to tell us what our children may or may not purchase at the bookstore. It is the concern of parents, of teachers, of librarians, to lead our children into the world of books without the distraction of a temptingly forbidden category of materials proscribed by law.

Our children need a positive approach to reading, in a climate of freedom. Forbidding any group of materials is the surest way to attract a juvenile's attention to it. Let's support our libraries and schools, and leave the book-censoring to the fascists and communists.

*Harold G. Morehouse*

Harold G. Morehouse  
President

February 11, 1969