

JUDICIARY COMMITTEE
57th NEVADA ASSEMBLY SESSION

MINUTES

March 12, 1973

The meeting was called to order by Chairman, Keith Hayes.

Doctor Broadbent, Assemblyman, came before the Committee to introduce Mr. Don Loverso a Washoe County resident and President of the Governor's Honor Guard. He informed that Mr. Loverso had done research concerning desecration of the American Flag. Mr. Loverso appears before the Committee in the hope that consideration will be given to introduction of legislation strengthening the statutes regarding desecration of the flag. Mr. Loverso told the Committee that attention should be given to the things which have happened to the American flag. "Our flag represents love and patriotism and anyone who damages it should be punished to the full extent of the law."

Mr. Barengo asked if the witness had any suggestions. Mr. Loverso said that he would like to see desecration of the flag punished as a felony rather than a misdemeanor.

Mr. Barengo thanked the witness for the interest shown in this matter and told him that this would be looked into for possible strengthening of the existing statutes.

Mr. W.W. Adams, assistant City manager of Las Vegas produced certain pornographic items purchased at a shop in Sparks. He told the Committee that the store in question had a handprinted sign on the door which stated that persons under 21 should not enter, however there was nobody checking on the age of people coming into the store. Mr. Adams said that there exists now a very serious problem in control of sale of these items.

Lt. J.O. Smith of the Las Vegas Police Department narcotics and vice division appeared in behalf of A.B. 368. He stated that the registration requirement contained in this legislation would not prohibit those people who are determined to buy this type of material because they would have no qualms about signing their names for purchases. It would be a deterrent for someone who would be buying this type of thing to sell or distribute to young people. Mr. Smith said that while he was before the Committee he would also like to call attention to NRS 201.320 having to do with prostitution. Under the present law police are obliged to establish that a procurer etc., is living solely from the earnings of a prostitute. This would even apply to a person drawing welfare checks even though he may be pimping his girlfriend at the same time. Lt. Smith said that a change in this area is badly needed and would appreciate the Committee's consideration of introducing such a measure. The bill should read "if a person is realizing any gain at all from the earnings of a prostitute". Mr. Torvinen read from the NRS and said that this is the way the statute reads now. The practice in Las Vegas must be from a court decision. Mr. Smith said that he would submit the particular case to the Committee.

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Mr. Carl Lovell, Las Vegas City Attorney, testified in behalf of A.B. 368. He said he hoped that it would be upheld as constitutional, but as a prosecutor was concerned with Section 3 which states that an adult book store means an establishment which "primarily" sells, rents, etc. does 49% of the gross receipts of a regular book store not constitute selling of adult books or still or motion pictures. Section 6, Paragraph 2 states that the registry may only be obtained by a law enforcement officer who obtains a search warrant directing production of the registry for the purpose of identifying the purchaser of a particular book or magazine. "I think to be consistent with section 3 still or motion pictures needs to be added as well as "any printed matter" so that we are not limiting ourselves when we are talking about the specific statute that gives the prosecutor the chance to find a crime. In addition lines 9, 10 and 11 after the word minor the phrase "or any other crime in the State of Nevada" should be inserted so that we can insure the fact of a search warrant. In other words it should be clear that we can go after these people on any charge we can find such as operating without a license, operating with some other violation etc.

Mr. Barenco asked the witness his opinion of the constitutionality of this bill as an attorney. Mr. Lovell stated that it is questionable. If the legislative intent can be sufficiently woven into the bill to show the courts that this is a reasonable exercise of regulation for the police power for government and for the benefit of all people and does not harrass, does not necessarily limit, does not undermine cut or destroy per se on it's own face a store that constitutionally supposedly has a right to exist then it should be all right. "We have been met with every opposition we can think of and probably some that those who are in this particular endeavor of free enterprise have yet to pull on us." "I think that each affirmative act we take and try to justify it as a reasonable exercise of police power for the benefit of the people, each act that is passed and everything that we can get into objective wording as much as possible will be a calling and will be an intent showing what the people want and what the standards are and what they want out of the courts as far as interpretation goes. If the courts are to turn around and they do need something to latch on to, bills such as this may be the source the courts are looking for. It should be in the best interests of the public to attempt affirmative action and pass these bills. Mr. Lovell stated that "if again you can argue on the reasonableness of this as a use of police power not to destroy, but to insure the domestic welfare of our children, if the courts are straining to find a way to help the people then this could be a source."

Mr. Huff, primary author of this bill, told the Committee and those present that the reason for the existance of this bill is that on numerous occasions the type of material on display before the Committee was being taken and dumped at the elementary schools to be viewed by innocent children. "Maybe the Supreme Court can't make up it's mind as to what is pornography, but I would question whether anyone here could deny that what they have seen is pornographic, obscene, and certainly obscene to be found in the hands of juveniles." "If we don't do something about it, and sit back and say, well the Supreme Court hasnt ruled correctly, we shouldn't try because it is questionable constitutionally, then this stuff is going to continue to get into

the hands of those we know shouldn't have it."

Mrs. Shirley Weedo of the Nevada Parent Teachers Association told the Committee that "we have had a long history of trying to pass any kind of legislation to keep pornographic literature out of the hands of young children." "It seems to us that this legislation would augment or add to the legislation we already have that is trying to do this same thing, so we would be in support of A.B. 368.

Mr. C. Thompson testified in behalf of A.B. 389, telling the Committee that the reason for this bill is that at present the law requires that whenever you have to make an arrest in another jurisdiction you must secure a judge's signature for telegraphic warrant before you can do this. This can cause several hours delay. The only thing we want to say is that a warrant of arrest may be served by telegraph and not that it has to be done by a judge's endorsement.

Mr. Thompson said that he would also speak in favor of A.B. 391 because this is a necessary tool of law enforcement. A person should be required to identify himself.

Mr. Thompson said that A.B. 393 also originated in his office and is a bill which was given a great deal of thought. He related that the number of felony offenses in Las Vegas are great, and the problems experienced with appearances on bail are probably magnified compared with the other jurisdictions in the state. The OR release is more prevalent today than we like to think it is since the courts interpret bail as a guarantee to appear and not a guarantee to keep in jail. With the elimination of capitol punishment almost every case became bailable and we must be able to maintain some type of hold. This is similar to the California law. When no violence is involved we do not object to OR release since the only thing we want to insure is that the man appears again. In an instance where a man has really nothing to lose if he moves three to four states away we do not spend the money to go after him. Failure to appear is in itself a separate offense in this bill. If the original charge is a felony, failure to appear on this charge is also a felony, likewise a Gross misdemeanor etc.,

Mr. Barenco asked if this isn't already covered in the statutes. NRS 199.335 Failure to appear after admission to bail. "Every person who has been committed to bail must provide a deposit surety or upon his own recognizance etc. In this section a person has thirty days to surrender himself after failure to appear.

Mr. Thompson said his only comment would be that thirty days is too long.

With regard to A.B. 395 Mr. Thompson commented that by inserting the substance cocaine specifically, as requested in this bill, even though it might legally be redundant, it would remove our problem of the judge's feeling that cocoa or cocoa leaves is not specific enough.

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Mr. Thompson also addressed the Committee on A.B. 33, saying that he feels that the intent behind this bill is noble and well founded. As a concerned citizen he is in favor of anything we can do to cure the addict. 50 - 60% of the crimes committed in Clark County are as a result of narcotics. Speaking practically as a prosecutor there are problems. #1. There are no facilities in Clark County no handle the load. #2. I would hate as a District Attorney ever to put my office in the position where I am taking a man whom I have charged with a criminal offense which requires criminal intent and' informing the court, "this man is an addict" this evidence could come back to show that this man is not capable of having criminal intent. I think we are just paving the way in this area to cost conviction in a trial. This bill should be given very careful attention. We do not want legal rulings in this area. I am not speaking against the concept.

Mr. Lowman asked Mr. Thompson if he would be willing to sit down and try to come up with some wording that his office could support. This was agreed upon, and this bill will be scheduled for further consideration next week.

Mr. Vern Calhoun from the State Narcotics division appeared to testify on A.B. 415.

Mr. Barengo asked the witness if he had any comment on A.B. 395 to which Mr. Calhoun replied, "I think it is redundant".

Mr. Calhoun read a letter (see attached) explaining the position of the narcotic's division.

Mr. Fry said that his name appears on this "ill-conceived piece of legislation" and the intent as represented by physicians is an attempt to save some bookkeeping since they are already required to register with the federal bureau.

Mr. Calhoun remarked that if they are dispensing the drugs which fall into this classification they must keep records.

Mr. George Bennett, Inspector for the Board of Pharmacy, wished to make a statement concerning A.B. 415. He told the Committee that in all of the 35 states which have enacted a controlled substance act the Board of Pharmacy is the administering agency. For the average physician this bill does not demand any more record keeping than is presently done. This basically applies to those physicians who dispense drugs from their office.

Mr. Glover spoke to the other members regarding A.B. 406 which prohibits unauthorized reproduction manufacture, distribution or sale of recorded material. He passed out a statement regarding the need for this type of legislation. (see attached)

Appearing next before the Committee was Mr. N. Beatty, manager of the credit bureau for the past 27 years in southern Nevada. He spoke to the members concerning the need for changes in the area of debt counseling. A bill of the same nature as A.B. 430 died in the legislature four years ago from lack of attention. We are trying to regulate the fringe legal operations, really some are plain fraud. There is presently one such operation in Reno, and none in Southern Nevada since we have managed to run them out of town.

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Mr. Huff asked what type of fee this type of operation charged. Mr. Beatty said usually about 15%. Some individuals for one reason or another need a lot of help in handling their debts. Since the business supported agency is essentially a free service and frequently just does not have the time, often a private service will suit this person best.

Mr. Hayes asked the witness if he felt that fewer people would have the problem of being unable to handle their affairs if there was some training in the high schools in money management, of whatever. Mr. Beatty agreed that the consumer would profit from a program of this nature. To exist in today's society with the amount of contracts and credit a person faces this is a real need.

Mr. Fry felt that on Page 5 line 3 and 4 there should be some language which could permit listing of additional debts. Mr. Beatty felt that this should be included also.

Preston Tidwell, Bank Superintendent for the State of Nevada, also addressed the Committee on AB. 430. He said that he had good news in that the banking division could supervise the debt counselors without additional funds. He suggested that line 43 on Page 4 end after the word licensee saying that inclusion of the rest of this paragraph would place too large a burden on the debt counselor. These records are not too necessary to the banking industry. A debt counselor properly supervised would perform a very necessary service to the state of Nevada. This bill has some very good features. Mr. Tidwell stated that he would like to see the inclusion of the examination fee in this bill also.

Senator Echols arrived with a youth group from Southern Nevada who are interested in the 18 year old age of majority bill. Mr. Barengo informed them that this bill is presently in a sub-committee for consideration and that since it has been the subject of two hearings we will not be hearing any more testimony.

Mr. Lowman asked Mr. Beatty if the suggestions made by Mr. Tidwell would meet with his approval. Mr. Beatty suggested that there should be a cap on the maximum cost for an audit, and that perhaps 10 days allowed for remittance to the creditor is too little time saying that 30 days should be adequate. He stated that the Credit Manager's Association of Southern Nevada and the Clark County Debt Counseling Service are both in favor of this legislation.

Mr. Fry reported on A.B. 34, S.B. 64 and A.B. 170. He said there had been no success in meeting with members of the Senate Judiciary. It is his suggestion to either hold the Senate bill and pass out the Assembly bill as is or amend the Senate bill to conform with A.B. 34 and force a conference with the Senate to discuss the views. A.b. 170 could be amended to conform with either bill.

ACTION ON THE BILLS:

A.B. 368 SUMMARY-Requires registry of purchasers to be maintained by adult book stores.

Mr. Glover asked what is to prevent the purchasers from tearing out the number on these books etc.

Mr. Huff said that since the number would be on six different pages they would have to look for it and that they would catch a lot of people before they got wise to it. He also told the Committee he had 3,170 signatures from southern Nevada in support of this bill.

Mr. Hayes moved to recommend DO PASS WITH AMENDMENTS (delete the word "Primarily" from Page 1, Line 14, and Page 2, line 37, add still or motion pictures or any printed matter to Page 2, Line 8, and the words "or any other crime" to Page 2, Line 11. Mr. Glover seconded.

Voting against this motion was Mr. Fry.

Mr. Torvinen and Ms. Foote were absent for this vote.

MOTION CARRIED DO PASS A.B. 368 with AMENDMENTS AS ABOVE)

A.B. No. 389 SUMMARY-Relaxes certain requirements for service of arrest warrants by telegraph.

Mr. Hayes moved to recommend DO PASS, Mr. Huff seconded.

Mr. Torvinen and Ms. Foote absent for the vote.

MOTION CARRIED UNANIMOUSLY DO PASS A.B. 368

A.B. No. 391 SUMMARY-Clarifies right of peace officers to compel detained person to identify himself.

Mr. Hayes moved to recommend DO PASS, Mr. Lowman second.

Mr. Fry asked if any of the constitutional questions had been discussed. Mr. Hayes reminded him that Mr. Thompson had said that this was within the constitutional requirement.

MOTION CARRIED UNANIMOUSLY DO PASS A.B. 368

A.B. No. 393 SUMMARY-Provides criminal penalty for failure to appear as directed when released prior to conviction.

Mr. Fry said that this bill is redundant and moved Indefinite Postponment Mr. Hayes seconded.

MOTION CARRIED UNANIMOUSLY

A.B. No. 406 SUMMARY-Prohibits unauthorized reproduction, manufacture, distribution or sale or recorded material.

Mr. Glover moved to recommend DO PASS, Mr. Hayes seconded.

Mr. Fry wondered about the problems of personal taping of certain programs, etc. It was explained that there is no problem with taping on a private level as long as selling of the taped material is not involved.

MOTION CARRIED UNANIMOUSLY DO PASS A.B. 406

A.B. No. 395 SUMMARY-Specifically includes cocaine in schedule II relating to controlled substances.

Mr. Lowman said that he feels this is redundant, and not necessary.

Mr. Hayes moved INDEFINITE POSTPONMENT, Mr. Lowman seconded.

MOTION CARRIED UNANIMOUSLY.

Mr. Fry asked that A.B. 415 be held over until tomorrow to allow Dr. Broadbent to testify. Mr. Barengo granted this request.

Mr. Lowman said that he is meeting with law enforcement to establish a bill that would meet with support and approval on A.B. 33. This is held until next week for further consideration.

Mr. Barengo passed out some material presented by Judge Roscoe Wilkes for Committee consideration to sponsor in introduction.

A.B. No. 430 SUMMARY-Regulates the business of debt adjusting.

Mr. Hickey moved to recommend DO PASS, Mr. Lowman seconded.

Mr. Fry wanted the bill amended to enable the debtor to add additional obligations.

Mr. Hickey withdrew the original motion and moved to recommend DO PASS with an amendment per Mr. Fry's suggestion, Mr. Lowman seconded.

MOTION CARRIED UNANIMOUSLY DO PASS A.B. 430 with AMENDMENT.

Mr. Hayes moved to adjourn. CARRIED.

STATEMENT REGARDING NEED FOR
STATE ANTIPIRACY LEGISLATION

Undoubtedly, the most serious economic problem confronting the publishers of copyrighted music, the legitimate phonograph record and tape recording manufacturers, the performing artists, and the legitimate distributors and retailers of records and tapes is the unauthorized duplication of recorded performances of musical works. The illegal acts are generally perpetrated through one of the following methods:

1. The recording of the legitimate record is duplicated and the label and jacket are counterfeited, whereby the record is marketed as that of the original record manufacturer.
2. The recording of the legitimate record is duplicated, the names of the original artists and musicians are printed on the label and jacket, and a fictitious trade name is employed, whereby the record is marketed for every intent and purpose as the original recording.
3. An original recording is surreptitiously made at a live

concert, duplicated, and sold in plain packaging bearing only the names of the performers and the program contents.

As a result of unauthorized duplication, (a) no royalties are paid to the music publishers controlling the respective copyrights in the musical works for the use thereof; (b) no compensation is paid to musicians, arrangers and performing artists; (c) the legitimate phonograph record and tape recording manufacturers are deprived of the profits from their creative works; and (d) the distributors and retailers of legitimate recordings are unable to compete with dealers in pirated products. The substantial savings in his cost of manufacture enables the unauthorized duplicator to market his product at exceedingly low prices, whereby he is capable of destroying the market for the legitimate recordings. The public often receives an inferior product because of the lack of quality control over the unauthorized recording. In many instances this results in further injury to the performing artists and legitimate phonograph record manufacturers because the public attributes the poor quality to them. Finally, cities, States and the Federal Government lose out on revenues because pirates rarely, if ever, pay taxes on what they make, sell and profit from.

Before the recent tape recording revolution, when phonograph

records were practically the sole form in which recorded performances were sold, the unauthorized duplicators concentrated on reproducing phonograph records. Since the development of the tape recording art and the public acceptance of recorded performances on tape, the problem of unauthorized duplication has been greatly compounded. Whereas phonograph record duplication requires substantial investment or utilization of plant and reproducing equipment, tape duplication is often accomplished by means of the use of a minimum amount of duplicating equipment. Unauthorized tape duplications have been accomplished on a substantial scale by the use of one recording device, the only materials purchased being raw tape, blank cartridges and typewritten labels. This, of course, gives the unauthorized duplicator much greater mobility and makes discovery of his operation much more difficult.

One of the most sophisticated bootleg operations ever devised emphasizes the difficulty in enforcing the present laws against unauthorized duplicators. In late 1970, a manufacturer of bootleg recordings was established by an underground syndicate in California. It was established in a highly clandestine location, with armed guards surrounding the premises. Before the initial release of any of the bootleg recordings for commercial sale, the manufacturing plant was fully equipped and a nationwide distribution scheme was established to maximize distribution

at the inception. The distribution scheme was based upon use of WATS telephone contacts throughout the nation, a series of franchised, exclusive dealers in major market areas, and extensive use of air freight services for rapid transmittal of the recordings. The principals involved created phony names, false addresses, and arranged for telephone answering services which could not identify them. The recordings were generally sold at retail for approximately one-half of the retail selling price of legitimate recordings.

The manufacturing base of the operation was so astutely concealed that more than \$20,000 was spent in private investigation fees just to identify the participants. During the ensuing weeks, the plant was moved to other clandestine locations in California and, thereafter, transferred to Phoenix, Arizona. Based upon information derived from the Phoenix Police Department, which was searching for stolen equipment, the owners of the music copyrights were able to institute a massive suit for copyright infringement in early 1971, and immediately obtain a writ of seizure of equipment under the Rules of the Supreme Court peculiar to copyright infringement actions. Pursuant to the writ, the United States Marshal entered the premises and all of the recording equipment and supplies were seized and taken into the Marshal's custody. It took a crew of six professional moving men more than eight hours and five vans to remove

all of the seized merchandise. The manufacturers thereafter objected to the seizure, through use of an individual selected to serve as a front, solely upon the ground that the seizure was unauthorized to the extent it comprehended equipment and supplies. No claims were made that defendants were not engaged in an illicit enterprise. The syndicate merely sought the return of the merchandise to reestablish the larceny. The property is still being held by the United States Marshal while the Federal Court of Appeals is considering the propriety of the scope of the seizure. Nevertheless, within weeks after the seizure, the syndicate obtained other equipment and began operating again in a similar fashion through a post office box in Denver, Colorado, utilizing a Maryland corporation and every conceivable anonymous business device. The tactics had changed slightly, however. The manufacturers printed on the packaging of the recordings a legend declaring that all copyright royalties were paid and the recordings were manufactured in full compliance with the Copyright Act. Of course, this was merely another subterfuge designed to increase the dissemination of their product. Within two months, this corporation's business was terminated, and a Delaware corporation of virtually the same name continued producing the same bootleg recordings. The available remedies for this conduct have not served as any deterrent to the syndicate.

Significantly, the syndicate did not see fit to return to Arizona.

As a result of the vast publicity attending the publishers' suit, samples of which are annexed hereto as "Exhibit 1", and a concentrated legislative effort, Arizona passed an antipiracy bill in early 1971. Retailers and distributors in Arizona report the State is free of any significant bootleg activity and their sales of legitimate product have increased as much as eighty percent.

In addition to the highly sophisticated level of bootleg activity just described, there are a considerable number of low-volume, low-quality duplicators who operate on a small scale but, when taken together, create a considerable impact on the market for legitimate recordings. They also operate in a clandestine fashion, but generally deliver their merchandise off the back of a truck in exchange solely for cash payments. Included in this category are the purveyors of unauthorized concert recordings who make live recordings of concert performances, duplicate them, and sell them in homemade type packaging.

It is imperative to enact criminal sanctions to deter the manufacture and sale of bootleg recordings. As more fully appears from the annexed article, marked "Exhibit 2", which appeared in an issue of BUSINESS WEEK, the bootleg business is conservatively estimated to produce

one hundred million dollars a year in illicit revenues. The profits, of course, are taken free of any taxes. Private civil remedies have not proved adequate to date, as illustrated by the activities of the California-Arizona-Maryland-Colorado-Delaware operation. In fact, there appear to be more unauthorized duplicators in operation today than at any other time. The economic threat to music publishers, legitimate phonograph record and tape recording manufacturers, distributors and retailers and performing artists is increasing daily.

It is essential that the provisions of State laws enacted to deal with this problem be applicable to retailers and retail sales. The manufacturer of the bootleg recordings is difficult, if not impossible, to locate, and is of a fly-by-night nature. Similarly, the unauthorized recordings are rarely distributed on the wholesale level through legitimate sources having roots in the community. The usual method is to wholesale the unauthorized recordings through itinerant peddlers who sell by telephone or out of the back of trucks and cars bearing phony license plates. It is only the retailer who has roots in the community, and it is only the retailer who can both protect himself and keep this illicit merchandise out of the normal channels of trade.

In the present state of the industry, retailers are highly sophisticated, and well educated with respect to the existence of unauthorized recordings.

The trade papers serving the recording industry repeatedly run prominent articles with respect to the nature of unauthorized recordings and the legal consequences arising from sales thereof. Furthermore, in connection with copyright infringement suits instituted against retailers, the courts have repeatedly dismissed as lacking in merit the contention that the retailer should not be held liable for the sales of unauthorized recordings.

Significantly, legitimate retailers have had no difficulty in operating under such legislation. To the contrary, they have widely praised the purposes and effect thereof.

ASSEMBLYAGENDA FOR COMMITTEE ON JUDICIARYDate MARCH 12, 1973 Time 1:00 PM Room 240

<u>Bills or Resolutions to be considered</u>	<u>Subject</u>	<u>Counsel requested*</u>
A.B. 368	SUMMARY-Requires registry of purchasers to be maintained by adult book stores.	
A.B. 389	SUMMARY-Relaxes certain requirements for service of arrest warrants by telegraph.	
A.B. 391	SUMMARY-Clarifies right of peace officers to compel detained person to identify himself.	
A.B. 393	SUMMARY-Provides criminal penalty for failure to appear as directed when released prior to conviction.	
A.B. 395	SUMMARY-specifically includes cocaine in schedule II relating to controlled substances.	
A.B. 406	SUMMARY-Prohibits unauthorized reproduction, manufacture distribution or sale of recorded material.	
A.B. 415	SUMMARY-Exempts physicians from registration under Uniform Controlled Substances Act.	
A.B. 33	SUMMARY-Permits District Attorneys to obtain commitment of certain drug addicts.	

*Please do not ask for counsel unless necessary.