

The meeting was called to order at 8:07 a.m. by Senator Close, who also chaired the meeting.

## SENATE MEMBERS PRESENT:

Senator Close  
 Senator Hernstadt  
 Senator Don Ashworth  
 Senator Dodge  
 Senator Ford  
 Senator Raggio  
 Senator Sloan

## ASSEMBLY MEMBERS PRESENT:

Co-Chairman Hayes  
 Mr. Stewart  
 Mr. Brady  
 Mr. Coulter  
 Mr. Fielding  
 Mr. Horn  
 Mr. Malone  
 Mr. Polish  
 Mr. Prengaman  
 Mr. Sena

## SENATE MEMBERS ABSENT:

None

## ASSEMBLY MEMBERS ABSENT:

Mr. Banner

SENATE BILL 279

Provides for receivership for gaming establishments in certain cases.

Senator Thomas R.C. Wilson, primary sponsor of this bill, said that there are problems with this bill in its current form. He said the bill was not requested to address any particular problem.

Senator Wilson said that if a licensee of substantial size becomes jeopardized, there should be some option other than closure. He said that closure is an option that is not always in the public interest.

Senator Wilson said the bill should be amended to be applicable to any form of licensee and not just corporations. He said the Committee had received copies of a memo (Exhibit A) addressed to him from Bud Hicks suggesting a number of changes in the bill.

Senator Wilson said that there are problems in the bill concerning specific definitions of the powers of appointing the trustee. He said the Gaming Commission would probably be required to develop a list of persons who would be qualified and suitable for stepping into receivership positions. He felt that the district court should be mandated, after a finding of suspension and upon application by the Gaming Commission, without any discretion to appoint a qualified and suitable receiver.

Senator Wilson said that the licensee should bear the expense of receivership. He said the compensation level for the receiver would have to be adequate. He said that there should be a guarantee from the State of no liability to a receiver when performing his duties.

Senator Hernstadt asked Senator Wilson if it was his opinion that gaming authorities have not closed down a licensee for fear of putting people out of work. Senator Wilson answered that it has to be difficult to invoke suspension when the consequences would be as great as they are.

Clair Haycock, Vice Chairman of the Nevada Gaming Commission, said that it has become apparent that a bill such as this is needed due to the recent Aladdin Hotel situation in Las Vegas. He said that similar situations have arisen which would involve multi-thousands of jobs and affect probably four times as many individuals. He said that in response to Senator Hernstadt's question concerning the impact of closing a large licensee, the impact has never been considered in a vote. He said, however, that it would be wrong to say that this impact was not always on an individual's mind when voting.

Senator Raggio asked whether appointment of a receiver should be initiated by court action or commission action. Once the action would be established, he asked how and when the action would be terminated. He further asked if there would be an authority to sell the assets against the owner's wishes.

Mr. Haycock said that the way the law is written now, five days after the emergency situation exists, a complaint has to be drawn. He said that the resolution of the complaint would be the determining factor of termination of receivership action. He said this would give the commission the bending room to make the determination of how long the receivership situation would go on. He said the commission felt this was necessary action to be able to take care of the problem without all of the assets being disseminated to the detriment of the State.

Mr. Haycock said that the commission would like to see the bill state that if a serious complaint is raised, and action is directed against the licensee, the licensee cannot say that he will close his doors thereby putting numbers of people out of work. He said that this bill will not be widely used, but the language will be in the statute if it has to be.

Senator Don Ashworth said that size of an establishment would probably have to be a factor in appointing a receiver. He suggested that a licensee with slot machines in a grocery store might argue that he was closed down due to improprieties, but a larger casino continued to operate through State control, thereby continuing to make money.

Senator Hernstadt asked if the Aladdin had not consented to a receivership situation, would the licensee have been closed. Mr. Haycock answered, "Absolutely."

Ray Pike, Chief Deputy Attorney General for Gaming, stated that the State has the ability to suspend or revoke a license which is an absolute power based on statute. He said that the ability to act quickly focuses on protecting the assets. He said there is a real concern that a lot of money will go out the back door, and a receiver may not have the assets to continue an operation.

Mr. Pike said it would be important to have a court appointment of a receiver. He said the commission could still select the individual by allowing for an ex-party application to the court by the commission. The court could be mandated to accept the commission's recommendation.

Mr. Pike said the receiver should have access to information about employees in the casino that State officials may have. Also auditors should be available before, during, and after the transition to receivership. He said that enforcement agents should also be present in the casino.

Senator Close asked where an operation was previously successful, but lost money under State control if the State would have any liability. Mr. Pike answered that the State would have no liability. He said the discretionary decision to revoke a license if done in good faith by the commission carries with it governmental immunity. He said that the court would be monitoring the receiver, and people with interest in the license would be monitoring the actions of the receiver.

Senator Raggio asked if it was envisioned that a more formal application could be filed after the appointment of a receiver. Mr. Pike answered affirmatively.

Senator Raggio asked if there could be input from equity owners at the time of the formal application. Mr. Pike said he had concern with this because some of the people who might have something to say about the receiver's appointment might be the ones who have been found unfit.

Mr. Pike said he felt it would be important to change the term "receiver." He said this term creates a lot of unrest among creditors. Senator Dodge suggested "conservator" as a better term, and Mr. Pike agreed that this term would be better.

Senator Dodge said that if the State was trying to protect the equity of the property owners, it could not be said the State was not working for them.

~~XXXXXXXXXXXX~~Date: March 21, 1979Page: 4

Ed Bowers, Director of the Gaming Industry Association, said that most of the members of the association would acquiesce to this legislation. He said there were some serious concerns with the present language of the bill. He said he would defer further comment to the joint hearing on March 26, where this bill would again be considered.

Senator Close said that a subcommittee would be appointed to work on redrafting this bill.

Robbins Cahill, Nevada Resort Association, said that he supported the concept of this legislation, but he felt that numerous changes should be made in the bill. He also asked that the Committees consider the interests of local authorities in acting on gaming licenses. He said also that once a panic starts in a casino, it is very important to take action immediately.

#### ASSEMBLY BILL 142

Creates crime of using minor in preparing pornography.

Mylan Barin Roloff said that the Northern Nevada Chapter of the National Organization for Women strongly supports legislation making it a felony to use minors for pornographic purposes. She said that unless child pornography is viewed as a felony, little can be done to those that take part in these activities.

Mrs. Florence McClure, representing Community Action Against Rape, presented her testimony to the Committees and also submitted a written statement (Exhibit B).

Arthur Thomas said that since the Senate and Assembly are charged with the concern of public health that any area of health that concerns mental health is also a concern of the Legislature. He said that passage of this bill would be serving this purpose and would be highly commendable.

#### ASSEMBLY BILL 143

Revises test for obscenity and provides civil remedies.

Richard L. Siegel, Vice President of the American Civil Liberties Union of Nevada, presented a written statement on A.B. 142 and A.B. 143 (Exhibit C).

Mr. Siegel said that the governmental activities exclusion did not make sense to him. He said that there should be equal protection for the functional equivalents, of those types of operations being protected, in the private sector.

Mr. Siegel said his second concern was in the definition of community. He said that his study of obscenity led him to believe that this definition was the critical issue in the

area of obscenity. He said the bill provided use of a local community, but he said it seemed that only a single statewide standard would make any sense.

Mr. Siegel said that the National Commission on Obscenity and Pornography had reported to former President Nixon that extensive investigation by the commission and by others provided no evidence that exposure to or use of explicit sexual material plays a significant role in sexual crimes. In reference to statements by a previous witness, he stated that it is so easy to abuse scientific evidence. He said that a person cannot rely on the findings of obscenity or violence to show there is a problematic connection between various materials and crime.

In reference to Mr. Siegel's last statement and on that basis, Mr. Stewart asked if the President's study on pornography could also be rejected. Mr. Siegel said this report merely showed that it had not been proven that there was a connection between pornography and sexual crimes. He also said that this report had been rejected by President Nixon.

Senator Dodge asked Mr. Siegel if his common sense would tell him that there was a connection between pornographic material and sexual crimes. Mr. Siegel said his common sense told him that if a person already has serious psychological problems, and he indulges in use of pornographic materials problems could result. He said his common sense also told him that there are a great majority of people who read and view pornography and have no greater desire to get involved in pornographic activity.

Senator Raggio questioned Mr. Siegel's reference to a state standard regarding pornography. Mr. Siegel said the first choice of ACLU would be that there be no standard or regulation of materials that are available to adults. The second option would be a single national standard. He said since this did not seem to be a viable option, it would come down to a choice between the application of single states and the use of local community standards.

In view of Mr. Siegel's remarks concerning community standards, Senator Raggio asked why the standard for Las Vegas should control Elko, Hawthorne or Reno. He asked if it was better that the people living in a community be allowed to set their own standards.

Mr. Siegel answered that this would be a matter of individual rights. He asked why he should have less freedom if he moved from Reno to Yerington.

Martha Gould of the Nevada Library Association said she had worked with the interim committee that studied pornography. She said it had been her understanding of that committee's intent that private institutions would also be protected by

this bill. She said that the association had worked for acceptance of a state standard regarding pornography rather than a community standard. She said that in the end, the association accepted the standard that is in the bill. She said also that the association is in support of A.B. 142.

Dionne Janson stated that she had worked with the Extension Service in Carson City concerning problems with schools and children. She said that the consensus of the committee she worked with was that the increase of pornography in Carson City is of great detriment to the school children. She said she was very much in support of passage of this bill.

Ms. Janson said she mailed to members of the Committees a copy of a report printed in the San Francisco Chronicle concerning the American Psychiatric Conference held in Toronto, Canada, last summer. She said that this conference concluded that pornographic material was detrimental to the well-being of society. She said she would support more control in the area of distribution of pornographic material and more enforcement of the laws that already exist in being able to take some of the things off the counters at the local grocery stores.

John Foley said that the U.S. Supreme Court wrestled with the problem of defining pornography for four years before setting up the Miller Standard. He said this bill was patterned after the Miller Standard. He suggested adding the words, "lewd exhibition" on Page 3, Line 27.

Eleanor Millman submitted to the Committees material she had found in her neighborhood which she said was within reach of young children. She said that evidently this type of material is so prevalent a person does not have to go to a store to obtain it. Mrs. Millman is from Carson City.

At 10:08 a.m., Senator Close recessed the meeting for the individual Committees to meet in their respective committee rooms.

Respectfully submitted,



Carl R. Ruthstrom, Jr.  
Assembly Secretary

MEMORANDUM

TO: Spike Wilson  
FROM: Bud Hicks  
DATE: March 12, 1979  
RE: S.B. 279--Comments  
Casino Receiverships

---

General

The concept of casino receivership status is good and such a procedure would certainly assist the Commission in implementing the policies of the Gaming Control Act. However, the format and content of S.B. 279 leaves much to be desired and probably could not withstand a judicial challenge. The concept - taking a person's property and thereafter operating it on a daily basis, even in the privileged industry of gaming, raises complex constitutional issues. The statute, if one is adopted, should be substantially more explicit than as currently presented in S.B. 279. For example, the authority, duties, and responsibility of the receiver should be set forth in the statute. Additionally, there are areas not addressed by the bill which should be considered. This memo is, therefore, directed toward the specific provisions of S.B. 279 and special note will be made of areas not addressed by the bill which warrant consideration.

Section 2

"If the commission revokes or suspends the license..."

Comment: The bill does not provide for the appointment of a receiver in cases where the license is permitted to lapse by virtue

of nonpayment of quarterly or annual fees and taxes. If the bill is amended to permit appointment of a receiver in such cases other provisions of the NRS, notably the tax provisions (e.g. NRS 463.270), would need related amendments to permit a qualified receiver to continue the operation even if all required fees and taxes have not been paid.

"...of any person who owns or operates a licensed gaming establishment, the commission may thereafter file a petition for the appointment of a receiver for the establishment..."

Comment: S.B. 279 does not contain a definition of a "receiver." Presumably, the "receiver" is like a "trustee" in bankruptcy, a "conservator" under the New Jersey Casino Control Act (See Assembly Bill 1046, State of New Jersey, Section 8), or a receiver as described, but not defined in NRS 78.625 through 78.720. Reliance cannot be solely placed on the corporate receiver provisions of NRS Chapter 78 for several reasons:

(1) Chapter 78 of the NRS deals only with the appointment and functioning of a receiver in the case of an insolvent corporation, which is not usually the case which would be anticipated in the case of a casino receivership situation; and

(2) Not all gaming licensees are corporations -- some are partnerships, sole proprietorships, trusts, etc.



"Upon request of the district court, the commission may submit to the court the names of any persons whom the commission finds to be qualified..."

Comment: Presumably the District Court will request suggestions from the Commission, but under this bill it may not. The Commission should be required to develop a list of pre-qualified receivers which must be made available to the district court when the Commission files its petition. The court should be able to consider other persons, subject to the approval of the Commission (as set forth in paragraph 5 of Section 2), but the requirement of the maintenance of a list of pre-qualified receivers will expedite the process and could additionally alleviate the problem raised in federal bankruptcy proceedings where qualified trustees must be appointed. While the state cannot require the federal court to select from a list of pre-qualified persons in bankruptcy proceedings, such a procedure could be of assistance to the federal court. Also, it's my experience that the federal court would welcome the assistance of the state in such proceedings. By requiring a list of pre-qualified receivers to be maintained, both state and federal needs would be satisfied.

Regardless of the foregoing, provision should be made for the investigation of pre-qualified receivers. Who is to pay the costs of such investigations? In the case where receivers are qualified prior to an actual appointment, there should be a provision that the state will seek out potential candidates and bear the costs of the investigation of such persons. Otherwise, all expediency is lost

if an investigation must be conducted after the revocation (or other termination) of the license but before the court appoints the receiver. Such a provision would, of course, require a fiscal note to be prepared in conjunction with the bill and, possibly, additional appropriations to the Board's budget.

"5. If the person appointed by the court is a person whose name was not submitted to the court by the commission, the court shall send to the commission the name of the person so appointed and a statement of his qualifications to serve as the receiver. The commission must immediately approve or disapprove the appointment. If the commission approves the appointment, the appointment is thereupon effective. If the commission disapproves the appointment, the appointment is ineffective, but the commission may file a second petition with any district court which did not make the appointment. Jurisdiction over the subject matter of the petition and all parties to the proceeding is hereby conferred upon the second court. The second court shall act upon the second petition in the same manner as in the case of a first petition."

Comment: Such a requirement forces the commission to act without

the benefit of an investigation. If time is of the essence and the court appoints a person unknown to the Commission, the Commission may be forced to make an unwise and uninformed decision. This section definitely needs modification.

"If the commission disapproves the appointment, the appointment is ineffective but the commission may file a second petition..."

Comment: What if the Commission doesn't care for the second court's appointment? Under the statute, the Commission has no recourse in such a case. At that point, jurisdiction is irretrievably vested in the "second court." Also, may the petition be filed in another division of the same court (e.g., the 8th Judicial District) or must it be filed in another district?

### Section 3

"1. As soon as an effective appointment of the receiver has been made, the court shall issue necessary orders pursuant to the appointment. Any person so appointed has, from the time of his appointment and until his appointment is terminated pursuant to law, full powers of a receiver over the gaming establishment."

The statute fails to define the "full powers of a receiver."

The powers, authorities, and duties of the receiver must be expressly defined to include the following:

1. Title, i.e., equitable title to the property and its assets, most importantly its bankroll, must vest in the receiver. To protect the bankroll, there must be a requirement that all bank accounts be maintained in Nevada so that the bankroll remains subject to the jurisdiction of Nevada courts;

2. The receiver must have the authority to seize and thereafter control the books and records of the gaming operation. To achieve this result, there must be a requirement that all such books and records be maintained at all times in Nevada so they will remain subject to the jurisdiction of Nevada courts;

3. The receiver must be able to institute and, most importantly, defend actions on behalf of the former licensee;

4. The receiver must be able to settle or compromise debts of the former licensee and to pursue payments of debts owed to it (especially markers). To accomplish this, steps must be taken to insure that the markers are subject to the jurisdiction of Nevada courts, otherwise the former operators will send all their markers out of state (which is currently the common practice), collect on them, but not return the money to the receiver. Nevada stands to lose substantial tax revenues if this happens and the Nevada property will suffer tremendous cash flow difficulties.

5. The receiver must be authorized to take all steps

necessary to continue the business, including the authority to borrow money, mortgage property, to terminate or enter into contracts, etc.;

6. The receiver have full powers over employees, including the authority to terminate, or hire employees, to determine compensation, etc.;

7. The receiver must be empowered to grant or renew leases;

8. The receiver must be authorized to sell the property, subject to Court approval.

There are other important matters regarding the receiver which should be addressed in the statute. These matters include:

A. Compensation of the receiver;

B. Limitations on the liability of the receiver;

C. Reports required by the receiver to the Court and the Commission.

The provisions of sections 31 through 40 of Assembly Bill No. 1046 of the State of New Jersey, as approved June 2, 1977, should be carefully considered as a model for this legislation. A copy of these provisions are attached for your reference. Failure to adopt a defensible statutory scheme pertaining to receivers will result in the defeat of a needed concept and potentially tremendous liability to the receiver and possibly the State of Nevada.

S.B. 279, in its current form, should not be passed.

AJH:ss

1 30. (New section) Investigation by the Division of Gaming  
2 Enforcement. The division shall investigate and report to the com-  
3 mission with regard to the qualifications of each person "[who is  
4 proposed]" *\*whose name is submitted to the division by the com-*  
5 *mission\** as a candidate to serve as a trustee pursuant to this  
5a amendatory and supplementary act.

(New Article) CASINO LICENSE CONSERVATORSHIP

1 31. (New section) Institution of Conservatorship and Appoint-  
2 ment of Conservators.

3 a. Notwithstanding any other provision of the Casino Control  
4 Act, (1) upon the revocation of a casino license, (2) upon, in the  
5 discretion of the commission, the suspension of a casino license or  
6 operation certificate for a period of in excess of 120 days\*,\* or "[.]"  
7 (3) upon the failure or refusal to renew a casino license\*,\* and "[.]"  
8 notwithstanding the pendency of any appeal therefrom, the com-  
9 mission shall appoint and constitute a conservator to, among other  
10 things, take over and into his possession and control all the  
11 property and business of the licensee relating to the casino and the  
12 approved hotel; provided, however, that this subsection shall not  
13 apply in any instance in which the casino in the casino hotel facility  
14 for which the casino license had been issued has not been, in fact,  
15 in operation and open to the public\*,\* and provided further that no  
16 person shall be appointed as conservator unless the commission  
17 is satisfied that he is individually qualified *\*according\** to the  
18 standard applicable to casino key employees\*,\* except that casino  
19 experience shall not be necessary for qualification.

20 b. Notwithstanding any other provision of the Casino Control  
21 Act, (1) upon\*, *in the discretion of the commission,*\* the expiration  
22 of a temporary casino permit\*,\* except in those instances where  
23 *\*(a)\* a casino license has been issued, \*or (b) a casino license has*  
24 *not been issued because of the inaction of the commission,\** (2)  
25 upon the revocation of a temporary casino permit, (3) upon, in the  
26 discretion of the commission, the suspension of a temporary casino  
27 permit or operation certificate for a period of in excess of 60 days,  
28 or (4) upon the denial of a casino license to a temporary casino  
29 permittee, and notwithstanding the pendency of any appeal there-  
30 from, the commission shall appoint and constitute a conservator to,  
31 among other things, take over and into his possession and control  
32 all the property and business of the temporary casino permittee  
33 relating to the casino and the approved hotel; provided, however,  
34 that this subsection shall not apply in any instance in which the  
35 casino in the casino hotel facility for which the temporary casino

36 permit has been issued has not been, in fact, in operation and open  
37 to the public, and provided further that no person shall be  
38 appointed as conservator unless the commission is satisfied that he  
39 is individually qualified "according" to the standard applicable to  
39A casino key employees, except that casino experience shall not be  
39B necessary for qualification.

40 c. The commission may proceed in a conservatorship action in a  
41 summary manner or otherwise and shall have the power to appoint  
42 and remove one or more conservators and to enjoin the former  
43 or suspended licensee or permittee from exercising any of its  
44 privileges and franchises, from collecting or receiving any debts  
45 and from paying out, selling, assigning or transferring any of its  
46 property to other than a conservator, except as the commission  
47 may otherwise order. The commission shall have such further  
48 powers as shall be appropriate for the fulfillment of the purposes  
49 of this act.

50 d. Every conservator shall, before assuming his duties, execute  
51 and file a bond for the faithful performance of his duties payable  
52 to the commission in the office of the commission with such surety  
53 or sureties and in such form as the commission shall approve and  
54 in such amount as the commission shall prescribe.

55 e. When more than one conservator is appointed pursuant to this  
56 section, the provisions of this article applicable to one conservator  
57 shall be applicable to all; the debts and property of the former or  
58 suspended licensee or permittee may be collected and received by  
59 any of them; and the powers and rights conferred upon them shall  
60 be exercised by a majority of them.

1 32. (New section) Powers, Authorities and Duties of "[Re-  
1A ceivers]" "Conservators".

2 a. Upon his appointment, the conservator shall become vested  
3 with the title of all the property of the former or suspended licensee  
4 or permittee relating to the casino and the approved hotel, *subject*  
4A *to any and all valid liens, claims, and encumbrances*. *The con-*  
4B *servator shall have the duty to conserve and preserve the assets so*  
4C *acquired to the end that such assets shall continue to be operated*  
4D *on a sound and businesslike basis.*

5 b. Subject to the general supervision of the commission and  
6 pursuant to any specific order it may deem appropriate, a conserva-  
7 tor shall have power to:

8 (1) Take into his possession all the property of the former or  
9 suspended licensee or permittee relating to the casino and the  
10 approved hotel, including its books, records and papers;

11 (2) Institute and defend actions by or on behalf of the former or  
12 suspended licensee or permittee;

13 (3) Settle or compromise with any debtor or creditor of the  
14 former or suspended licensee or permittee, including any taxing  
15 authority;

16 (4) Continue the business of the former or suspended licensee or  
17 permittee and to that end enter into contracts, borrow money and  
18 pledge, mortgage or otherwise encumber the property of the former  
19 or suspended licensee or permittee as security for the repayment  
20 of the conservator's loans; *provided, however, that such power*  
20A *shall be subject to any provisions and restrictions in any existing*  
20B *credit documents;*\*

21 (5) Hire, fire and discipline employees;

22 (6) Review all outstanding agreements to which the former or  
23 suspended licensee or permittee is a party that fall within the  
24 purview of section 104b.\* of P. L. 1977, c. 110 (C: 5:12-104b.\*)  
25 and advise the commission as to which, if any, of such agreements  
26 should be the subject of scrutiny, examination or investigation by  
27 the commission; and

28 (7) Do all further acts as shall best fulfill the purposes of the  
29 Casino Control Act.

30 c. Except during the pendency of a suspension or during the  
31 pendency of any appeal from any action or event set forth in  
32 section 31 a.\* or b.\* of this amendatory and supplementary act  
33 which precipitated the "[receivership]" *conservatorship* or in  
34 instances *in* which the commission finds that the interests of  
35 justice so require, the conservator, subject to the prior approval of  
36 and in accordance with such terms and conditions as may be pre-  
37 scribed by the commission, *and after appropriate prior consulta-*  
38 *tion with the former licensee or permittee as to the reasonableness*  
39 *of such terms and conditions,* shall endeavor to and be authorized  
40 to sell, assign, convey or otherwise dispose of in bulk, *subject to*  
41 *any and all valid liens, claims, and encumbrances,* all the property  
42 of a former licensee or permittee relating to the casino and the  
43 approved hotel only upon prior written notice to all creditors and  
44 other parties in interest and only to such persons who shall be  
45 eligible to apply for and shall qualify as a casino licensee or  
46 temporary casino permittee in accordance with the provisions of  
47 the Casino Control Act. *Prior to any such sale, the former*  
48 *licensee or permittee shall be granted, upon request, a summary*  
49 *review by the commission of such proposed sale.*

50 d. The commission may direct that the "[receiver]" *conserva-*  
51 *tor*, for an indefinite period of time, retain the property and con-



52 tinue the business of the former or suspended licensee or permittee  
 53 relating to the casino and the approved hotel. *\*During such period*  
 54 *of time or any period of operation by the conservator, he shall pay*  
 55 *when due, without in any way being personally liable, all secured*  
 56 *obligations and shall not be immune from foreclosure or other legal*  
 57 *proceedings to collect the secured debt, nor with respect thereto*  
 58 *shall such conservator have any legal rights, claims, or defenses*  
 59 *other than those which would have been available to the former or*  
 60 *suspended licensee or permittee.\**

1 33. (New section) Compensation of Conservators and Others. In  
 2 any proceeding pursuant to section 31 of this amendatory and  
 3 supplementary act, the commission shall allow a reasonable com-  
 4 pensation for the services, costs and expenses in the conservatorship  
 5 action of the conservator, the attorney for the conservator, the  
 6 appraiser, the auctioneer, the accountant and such other persons  
 7 as the commission may appoint in connection with the conservator-  
 8 ship action.

1 34. (New section) Assumption of Outstanding Debts. As an  
 2 incident of its prior approval pursuant to section 32c.\* of this  
 3 amendatory and supplementary act of the sale, assignment, con-  
 4 veyance or other disposition in bulk of all property of the former  
 5 licensee or permittee relating to the casino and the approved hotel,  
 6 the commission may, in its discretion, require that the purchaser  
 7 thereof assume in a form and substance acceptable to the commis-  
 8 sion all of the outstanding debts of the former licensee or permittee  
 9 that arose from or were based upon the operation of either or both  
 10 the casino or the approved hotel.

1 35. (New section) Payment of Net Earnings During the Period  
 2 of the Conservatorship. No payment of net earnings during the  
 3 period of the conservatorship may be made by the conservator  
 4 without the prior approval of the commission, which may, in its  
 5 discretion, direct that all or any part of same be paid either to  
 6 the suspended or former licensee or permittee or to the Casino  
 7 Revenue Fund in accordance with regulations of the commission;  
 8 provided, however, that the former or suspended licensee or per-  
 9 mittee shall be entitled to a fair rate of return out of net earnings,  
 10 if any, during the period of the conservatorship on the property  
 11 retained by the conservator\*, *taking into consideration that which*  
 12 *amounts to a fair rate of return in the casino industry or the hotel*  
 13 *industry, as the case may be\*.*

1 35A. (New section) Payments Following a Bulk Sale. Following  
 2 any sale, assignment, conveyance or other disposition in bulk of

3 all the property subject to the conservatorship, the net proceeds  
4 therefrom, if any, after payment of all obligations owing to the  
5 State of New Jersey and any political subdivision thereof and of  
6 those allowances set forth in section 33 of this amendatory and  
7 supplementary act, shall be paid by the conservator to the former  
8 or suspended licensee or permittee.

1 36. (New section) Continuing Jurisdiction of Commission. A  
2 conservator appointed pursuant to section 31 of this amendatory  
3 and supplementary act shall at all times be subject to the Casino  
4 Control Act and such regulations, limitations, restrictions, terms  
5 and conditions as the commission may from time to time prescribe.  
6 Except as may be otherwise provided in this amendatory and sup-  
7 plementary act, during the period of any conservatorship imposed  
8 by the provisions of section 31 of this amendatory and supple-  
9 mentary act the casino operation "[of]" "in" the form of the con-  
10 servatorship shall be deemed to be a licensed casino operation and  
11 any reference in the Casino Control Act to any obligations or  
12 responsibilities incumbent upon a casino licensee or those persons  
13 dealing with, affiliated with, having an interest in, or employed by a  
14 casino licensee shall be deemed to apply to the said casino opera-  
15 tion.

1 37. (New section) Discontinuation of a Conservatorship.

2 a. The commission shall direct the discontinuation of any con-  
3 servatorship action instituted pursuant to section 31 of this amend-  
4 atory and supplementary act when the conservator has\*,\* pursuant  
5 to subsection 32 of this amendatory and supplementary act and  
6 with the prior approval of the commission\*,\* consummated the sale,  
7 assignment, conveyance or other disposition in bulk of all the  
8 property of the former licensee or permittee relating to the casino  
9 and the approved hotel.

10 b. The commission may direct the discontinuation of any such  
11 conservatorship action when it determines that for any reason the  
12 cause for which the action was instituted no longer exists.

13 c. Upon the discontinuation of the conservatorship action and  
14 with the approval of the commission, the conservator shall take  
15 such steps as may be necessary in order to effect an orderly transfer  
16 of the property of the former or suspended licensee or permittee.

17 d. The sale, assignment, transfer, pledge or other disposition  
18 of the securities issued by a former or suspended licensee or per-  
19 mittee during the pendency of a conservatorship action instituted  
20 pursuant to this article shall neither divest, have the effect of  
21 divesting, nor otherwise affect the powers conferred upon a con-  
22 servator by this amendatory and supplementary act

1 38. (New section) Required Reports. A conservator appointed  
2 and constituted pursuant to section 31 of this amendatory and  
3 supplementary act shall file with the commission such reports with  
4 regard to the administration of the conservatorship in such form  
5 and at such intervals as the commission shall prescribe. Such  
6 reports shall be available for examination and inspection by any  
7 creditor or party in interest and, in addition, the commission may  
8 direct that copies of any such reports be mailed to such creditors  
9 or other parties in interest as it may designate and that summaries  
10 of any such reports be published in such newspapers of general  
11 circulation as it may designate.

1 39. (New section) Review of Actions of Conservator. Any  
2 creditor or party in interest aggrieved by any alleged breach of a  
3 fiduciary obligation of a conservator in the discharge of his duties  
4 shall be entitled, upon request, to a review thereof in accordance  
5 with regulations to be promulgated by the commission.

1 40. (New section) Investigation by the Division of Gaming En-  
2 forcement. The division shall investigate and report to the com-  
3-4 mission with regard to the qualifications of each person who is  
5 proposed as a candidate to serve as a conservator pursuant to this  
6 amendatory and supplementary act.

1 41. The provisions of this act shall take effect immediately,  
2 except that sections 10, 17, 18, and 19 shall take effect on October  
3 1, 1978.

---

JOINT HEARING BY SENATE AND ASSEMBLY JUDICIARY COMMITTEES

ON AB 142 AND AB 143

March 21, 1979

I am Mrs. Florence McClure, Director of Community Action Against Rape, based in the City of Las Vegas but assisting victims of sexual assault throughout Clark County.

I spoke before this body last month, primarily on AB 142, which deals with child pornography and is modeled after the new Federal Law. I reiterate what I said at that time; it is a matter of record. About 4 summers ago, I took a class at UNLV entitled, "Sex Crimes Investigation," and for a field trip, our instructor arranged for us to be admitted to an adult bookstore on East Charleston near Eastern. I found the whole display vulgar. However, if I had known I would be here speaking today, I would have taken advantage of an arcade film strip for 25¢ that was showing a presentation called, "How to Have Fun with Children." Ever since I have been wondering what was in that film. I am sure it has been removed since some crackdowns have been made and the "60 Minutes" presentation on child porn have focused attention on them. No doubt they are underground.

An NBC journalist, Robin Lloyd, raising <sup>2</sup> ~~3~~ sons had them enticed into a home and nude pictures made of them. He was able to track the pornographer and the pictures down from information given him by the boys. The subject and its consequences intrigued him, so he wrote this book, FOR MONEY OR LOVE (Boy Prostitution in America). It was selected for distribution by the Book-of-the-Month Club so it has merit and validity. The introduction is by Senator Birch Bayh.

I can see no reason why AB 142 should not pass; it is needed and I do not believe there is a constitutional question here. Children should not be subjected to being used as actors in sex acts for portrayal in films, magazines or papers. Incest has risen drastically in our society and more such crimes are being reported all the time. I do not know if any of the fathers or step-fathers committing the crimes against their children are readers or viewers of such pornography; common sense tells me that it might give them ideas or set them to such a course of action. We have worked with children from the age of 4 up.

At the hearing in February, one of the speakers indicated there was no correlation between pornography and sexual assault. Since then, I have given more thought to the subject. I have worked on three cases where there was a definite correlation.

Case 1: Sparks, Nevada in 1974. I was on a trip to Reno. A rape counselor asked me to listen to a taped recording of a victim's statement about an attack on her in May. She, the victim, and her small son had been at a park that afternoon; when they left to go home, she did not realize that two men followed them. She put her son down for his nap and she laid on the couch. The men got into the house and sexually assaulted her; just prior to leaving, one of them asked her, "Have you ever seen an X-rated movie?" When she answered, "No," the men said, "We'll have to take you some time!"

Case 2: One of the founders of our Rape Crisis Center works for the state as a vocational rehabilitation specialist. She was assigned a client of about 27 years of age. He developed a crush on her and started sending her obscene notes, following her home,

-3-

and putting a little mound of dirt in front of her apartment door that looked like a grave and it had an obscene note under it. A check was made of this man's background and it was found that he had spent a number of years in a mental hospital and prison in Oklahoma; he had committed rape in that state of a horrendous nature. He had been diagnosed as schisoprenic. State rehab had already ordered him from the premises and he was told not to come back. He did and the police were called and they took him to jail and impounded the automobile. The victim of this harrassment was told by the police that he had a box of hard-core pornography books and magazines in a box in his Rancho vehicle. All they could pick him up and charge him with for over a 2-year period was "vagrancy" or "trespassing." One time he put his hand through the mail slot in the door and tried to reach the doorknob to open the door; the victim got her gun in one hand and the phone in the other and called the police. He slept in her backyard. She never felt safe. It was a case of the police not being able to get him on a greater charge. Finally, he rented a camper parked a block away from her home; it was parked in the back of someone's home and they rented to him, not knowing what he was up to. He had stopped children going into the victim's home and asked questions about her. They kept seeing his car parked down the street, so she called the police. This time, Municipal Judge Seymour Brown, who knew of this harrassment, heard the call on the police radio. He called the officers and told them to hold him as he had found a statute that could take this man into district court. Judge Keith Hayes got the case and he was able to get him out of the state; the offender returned once but again he was made to leave. Can you imagine what torture

-4-

this woman has gone through. Who's to say that those hard-core pornography books he had did not fuel his twisted mind. Judge Hayes, in no uncertain terms told him in the courtroom that he had caused her grievous mental anguish and deserved no mercy. His crimes were never grave enough, by the law, to put him in prison. During one of his short incarcerations, inmates in the jail got so sick listening to his harangue about the rape he committed in Oklahoma that they "punished" him and he had to spend some time in the psychiatric ward of So. Nevada Memorial Hospital.

Case 3: This case is more familiar to those in Southern Nevada. Russell Schaldenbrand, convicted of sexual assault, torture, kidnapping, etc., committed suicide in the jail the evening before he was to be sentenced the next day. He had flown in with the idea of committing the crime; it was brought out in court that he had brought nylon rope, ace bandages, black ladies underwear, a false face made of rubber, and other items, including a pornography book on "bondage." During her testimony, she stated that while he had her tied spread eagle on the bed, he read to her from this pornographic book.

Just as Doctor McLaughlin said during the testimony last month, pornography can create behavior problems with such individuals as cited above. Dade County, Florida (Miami area) has a program of counseling rapists, they might have further information as to whether they have found that pornography triggers some to commit the crime of sexual assault. Common sense tells us that it cannot be ignored.

-5-

Kathie Milone, Community Relations Director for KORK-TV, has produced a documentary, "Pornography - Las Vegas Style," which will be shown at 10:00 PM on March 26, next Monday night. A number of community workers and citizens will appear, giving their views on this subject. No doubt Channel 3 would make this film available for your viewing.



# American Civil Liberties

## Union of Nevada



To: Committees on Judiciary, Nevada State Legislature

From: Richard L. Siegel, Ph.D.,  
Vice-President, American Civil Liberties Union of Nevada

Re: A.B. 143

Thank you for this opportunity to testify on a bill that your committees have worked on diligently.

### 1. ACLU's overall position on pornography

The ACLU opposes any restraint, under obscenity statutes, on the right to create, publish or distribute materials to any person or the right of persons to choose the materials they read or view. We view these rights as protected by the First Amendment of the U.S. Constitution. The Union maintains that a causal relationship between exposure to obscenity and juvenile or adult delinquency has never been proven. Further, we believe that coercive sanctions inevitably threaten the distribution of non-pornographic materials.

The present trend to proscribe alleged pornography is in opposition to the major findings of the representative and expert National Commission on Obscenity and Pornography that reported to President Richard Nixon in 1970. That Commission sought to limit only the sale of sexual materials to young persons who do not have the consent of their parents and to persons receiving materials through the mails or through open public display. It was the conclusion of that Commission that:

Extensive empirical investigation, both by the Commission and by others, provides no evidence that exposure to or use of explicit sexual material play a significant role in the causation of social or individual harms such as crimes, delinquency, sexual or non-sexual deviancy or severe emotional disturbances. . . .

Some research has been produced since 1970 to support contrary views. Yet this research has not received general support in the scientific community.

### 2. A.B. 143

This bill, as revised, includes some astute approaches to the pornography issue. Yet we believe that it still has some serious flaws.

Sec. 2. Governmental Exclusion

Sponsorship by the State or political subdivision is not a rational distinction. Private and quasi-public organizations should have equal protection of the laws if their activities are functionally equivalent. You exclude private hospitals, libraries, schools and medical clinics. Why do Sierra Nevada College and St. Mary's Hospital lack equal protection in fulfilling their educational roles?

Sec. 9. Definition of Community

This is the critical dangerous inclusion in A.B. 143. The U.S. Supreme Court has allowed communities to be defined as local communities. However, it does not require this and the present definition makes no sense in terms of sound or consistent public policy.

The application of local community standards means that show-room or film advertisements in the Las Vegas Sun or Nevada State Journal could be termed pornographic by a jury in Pioche or Ely. It means that the individual rights of the writer and viewer are decided on the basis of the accident of location and the disposition of neighbors. This is not sufficiently constrained by the remaining language of Sec. 9.